No. 06-1265

JUL 19 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

KLEIN & CO. FUTURES, INC.,

Petitioner,

v.

BOARD OF TRADE OF
THE CITY OF NEW YORK, INC., ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Second Circuit**

JOINT APPENDIX

DREW S. DAYS III
Counsel of Record
BETH S. BRINKMANN
SETH M. GALANTER
BRIAN R. MATSUI
MORRISON & FOERSTER LLP
2000 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 887-1500
(202) 887-0763 facsimile

JEFFREY PLOTKIN
LORRAINE BELLARD
DAY PITNEY LLP
7 Times Square
New York, NY 10036

Counsel for Petitioner

HOWARD R. HAWKINS, JR.
Counsel of Record
EDMUND R. SCHROEDER
JASON JURGENS
KATE HOOKER
CADWALADER,
WICKERSHAM & TAFT LLP
One World Financial Center
New York, NY 10281
(212) 504-6000
(212) 504-6666 facsimile

Counsel for Respondents

JULY 19, 2007

**Petition For Certiorari Filed March 14, 2007
Certiorari Granted May 21, 2007**

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

United States District Court, Southern District of New York, Relevant Docket Entries 1

United States Court of Appeals, Second Circuit, Relevant Docket Entries 7

Complaint, *Klein & Co Futures, Inc. v. Board of Trade of the City of New York, Inc., et al.*, No. 00 CIV. 5563 (S.D. N.Y. filed June 26, 2000) 9

Notice of Motion to Dismiss the Complaint as Against the NYBOT Defendants, *Klein & Co Futures, Inc. v. Board of Trade of the City of New York, Inc., et al.*, No. 00 CIV. 5563 (S.D. N.Y. filed Oct. 16, 2000) 58

Affidavit of Howard Hawkins in Support of the NYBOT Defendants' Motion to Dismiss the Complaint, *Klein & Co Futures, Inc. v. Board of Trade of the City of New York, Inc., et al.*, No. 00 CIV. 5563 (S.D. N.Y. filed Oct. 16, 2000) 62

Exhibit B to Hawkins Affidavit; NYCC By-Law 5.5 65

Exhibit C to Hawkins Affidavit; NYCC By-Law 5.4 71

Exhibit D to Hawkins Affidavit; Press Release Issued by NYBOT, dated May 17, 2000 80

Exhibit E to Hawkins Affidavit; NYFE Rule 137, NYCC By-Law 6.5, New York Cotton Exchange Rule 5.09, and New York Cotton Exchange By-Law 6.37 82

NYCC By-Laws and Rules (CCH), dated February 2000 (included as Exhibit E to Affidavit in Opposition of Mark R. Alonso, dated November 30, 2000) 85

TABLE OF CONTENTS – Continued

NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Petitioner's Appendix to the 06-1265 Petition For A Writ of Certiorari at the following pages.

Page

Memorandum and Decision of the United States District Court for the Southern District of New York, filed February 18, 2005 ..... 16a

Opinion of the United States Court of Appeals for the Second Circuit, filed September 18, 2006..... 1a

Order of the United States Court of Appeals for the Second Circuit denying petition for rehearing and rehearing en banc, filed November 14, 2006 ..... 35a

RELEVANT DOCKET ENTRIES

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:00-cv-05563-GBD

* * *

Date Filed	#	Docket Text
07/26/2000	1	COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE $150.00. RECEIPT #379739. (em) (Entered: 07/27/2000)
		* * *
10/16/2000	8	NOTICE OF MOTION by Board of Trade NYC, New York Cotton Exch, New York Futures, N.Y. Clearing Corp., Mark D. Fichtel, Albert Weis, Jeff Soman, Charles Sweeney, Al Peres, Chris Meek, George Haase, Lawrence Gulitti, Bryan Sayler, Hitesh Trivedi, Joseph O'Neill, Walter Fair, Evan Thomas, Joseph Jach (collectively, the "NYBOT" defts) to dismiss Counts I through III of the complaint as against the NYBOT defts for failure to state a claim upon which relif [sic] can be granted, purs to FRCP 12(b)(6); to dismiss Counts IV through XI of the complaint as against defts for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint purs to FRCP 12(b)(1) and 28 U.S.C. 1367 and FRCP 12(b)(6); to dismiss Counts II and VII of the complaint as against the NYBOT defts. With affidavit in support of Howard R. Hawkins, Jr. attached. Return date 12/19/00 @ 10:00 am. (lam) Modified on 10/18/2000 (Entered: 10/18/2000)

10/16/2000	9	MEMORANDUM OF LAW by Board of Trade NYC, New York Cotton Exch, New York Futures, N.Y. Clearing Corp., Mark D. Fichtel, Albert Weis, Jeff Soman, Charles Sweeney, Al Peres, Chris Meek, George Haase, Lawrence Gulitti, Bryan Sayler, Hitesh Trivedi, Joseph O'Neill, Walter Fair, Evan Thomas, Joseph Jach in support of [8-1] motion to dismiss Counts I through III of the complaint as against the NYBOT defts for failure to state a claim upon which relief can be granted, purs to FRCP 12(b)(6), [8-2] motion to dismiss Counts IV through XI of the complaint as against defts for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint purs to FRCP 12(b)(1) and 28 U.S.C. 1367 and FRCP 12(b)(6), [8-3] motion to dismiss Counts II and VII of the complaint as against the NYBOT defts. (lam) (Entered: 10/18/2000)
10/18/2000	10	NOTICE OF MOTION by First West Trading, Norman Eisler to dismiss for lack of jurisdiction purs to Rule 12(b)(1) and 12(h)(3) of the FRCP; Return date 12/19/00. Attached is Affidavit in Support. (djc) (Entered: 10/19/2000)
10/18/2000	11	MEMORANDUM OF LAW by First West Trading, Norman Eisler in support of [10-1] motion to dismiss for lack of jurisdiction purs to Rule 12(b)(1) and 12(h)(3) of the FRCP. (djc) (Entered: 10/19/2000)
12/05/2000	12	MEMORANDUM OF LAW by Klein & Co. Futures in opposition to Eisler defts' [10-1] motion to dismiss for lack of jurisdiction purs to Rule 12(b)(1) and 12(h)(3) of the FRCP. (lam) (Entered: 12/06/2000)

12/05/2000 13 AFFIDAVIT of Mark H. Alonso, atty for Klein & Co. Futures in opposition to [10-1] motion to dismiss for lack of jurisdiction purs to Rule 12(b)(1) and 12(h)(3) of the FRCP. (lam) (Entered: 12/06/2000)

12/05/2000 14 MEMORANDUM OF LAW by Klein & Co. Futures in opposition to NYBOT defts' [8-1] motion to dismiss Counts I through III of the complaint as against the NYBOT defts for failure to state a claim upon which relif [sic] can be granted, purs to FRCP 12(b)(6), [8-2] motion to dismiss Counts IV through XI of the complaint as against defts for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint purs to FRCP 12(b)(1) and 28 U.S.C. 1367 and FRCP 12(b)(6), [8-3] motion to dismiss Counts II and VII of the complaint as against the NYBOT defts. (lam) (Entered: 12/06/2000)

12/05/2000 15 AFFIDAVIT of Mark J. Alonso, atty for Klein & Co. Futures in opposition to [8-1] motion to dismiss Counts I through III of the complaint as against the NYBOT defts for failure to state a claim upon which relif [sic] can be granted, purs to FRCP 12(b)(6), [8-2] motion to dismiss Counts IV through XI of the complaint as against defts for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint purs to FRCP 12(b)(1) and 28 U.S.C. 1367 and FRCP 12(b)(6), [8-3] motion to dismiss Counts II and VII of the complaint as against the NYBOT defts. (lam) (Entered: 12/06/2000)

12/18/2000 16 REPLY MEMORANDUM by the NYBOT defts in further support of their [8-1] motion to dismiss Counts I through III of the complaint as against NYBOT defts for failure to state a claim upon which relif [sic] can be granted, purs to FRCP 12(b)(6), [8-2] motion to dismiss Counts IV through XI of the complaint as against defts for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint purs to FRCP 12(b)(1) and 28 U.S.C. 1367 and FRCP 12(b)(6), [8-3] motion to dismiss Counts II and VII of the complaint as against the NYBOT defts (lam) (Entered: 12/19/2000)

12/19/2000 17 REPLY MEMORANDUM by First West Trading, and Norman Eisler in support of re: [10-1] motion to dismiss for lack of jurisdiction purs to Rule 12(b)(1) and 12(h)(3) of the FRCP. (kw) (Entered: 12/20/2000)

* * *

03/02/2001 20 Transcript of record of proceedings before Judge George B. Daniels for the date(s) of 1/17/01 @ 11:30am. (lam) (Entered: 03/02/2001)

* * *

02/18/2005 22 ORDER: for reasons further set forth in said Order, NYBOT's [8], and First West & Eisler's [10] motions to dismiss Klein's complaint in Klein I (00 Civ. 5563) is GRANTED. NYBOT and NYCC motion for judgment on the pleadings in Klein II (01 Civ. 4071) is DENIED. NYBOT and NYCC motion to dismiss Klein's counterclaims in Klein II (01 Civ. 4071) is GRANTED.. (Signed by Judge George B. Daniels on 2/18/05) (db,) Modified on 2/25/2005 (tr,). (Entered: 02/18/2005)

03/03/2005 23 CLERK'S JUDGMENT that for the reasons stated in the Court's Memorandum Decision and Order, dated Feb 18, 2005, defts' motion for summary judgment is granted dismissing the complaint in Klein I, NYBOT and NYCC's motion to dismiss the counterclaims in Klein II is denied; and NYBOT and NYCC's motion for judgment on the pleadings is denied. (Signed by J. Michael McMahon, Clerk on 3/3/05) (jf,) (Entered: 03/03/2005)

* * *

03/15/2005 25 NOTICE OF APPEAL from [22] Order on Motion to Dismiss/Lack of Jurisdiction,,,,,,,. Document filed by Klein & Co. Futures, Inc.. Filing fee $ 255.00, receipt number E 537474. Copies of Notice of Appeal mailed to Attorney(s) of Record: Howard R. Hawkins, Gary D. Stumpp. (pr,) (Entered: 03/15/2005)

* * *

03/17/2005 26 CORRECTED CLERK'S JUDGMENT That for the reasons stated in the Court?s [sic] Memorandum Decision and Order dated February 18, 2005, NYBOT, First West and Eisler's motion to dismiss Klein?s [sic] complaint in Klein I (00 Civ. 5563) is granted and the complaint is dismissed; NYBOT and NYCC's motion for judgment on the pleadings in Klein II (00 Civ. 4701) is denied; and NYBOT and NYCC's motion to dismiss Klein?s [sic] counterclaims in Klein II (00 Civ. 4071) is granted. (Signed by J. Michael McMahon, clerk on 3/17/05) (ml,) (Entered: 03/17/2005)

03/21/2005	27	SECOND CORRECTED CLERK'S JUDGMENT THAT for the reasons stated in the Court's Memorandum Decision dated Feb. 8, 2005, NYBOT, First West and Eisler's motion to dismiss Klein's complaint in Klein I (oo Cv 5563) [sic] is granted and the complaint is dismissed; NYBOT and NYCC's motion for judgment on the pleadings in Klein II (01 Cv 4071) is denied; and NYBOT and NYCC's motion to dismiss Klein's counterclaims in Klein II(01 Cv 4071) is granted.. (Signed J. Michael McMahon, Clerk on 3/21/05 (jf,) (Entered: 03/21/2005)

* * *

General Docket

U.S. Court of Appeals for the Second Circuit

* * *

9/18/06 Judgment of the district court is AFFIRMED by published signed opinion filed. (BDP) [Entry date Sep 18 2006] [AM]

9/18/06 Judgment filed. [Entry date Sep 18 2006] [AM]

* * *

10/2/06 Appellant Klein & Co. Futures, Inc. Petition for rehearing and petition for rehearing en banc filed with proof of service. [Entry date Oct 16 2006] [AM]

* * *

10/11/06 Movant Futures Industry Association motion to file brief as amicus curiae in support of petition for rehearing filed with proof of service. [Entry date Oct 12 2006] [AM]

* * *

10/20/06 AMICUS CURIAE Futures Industry Association, response to the petition for rehearing with proof of service FILED. [Entry date Oct 20 2006] [AM]

* * *

10/20/06 Order FILED GRANTING motion to file brief as amicus curiae by Movant Futures Industry Association, endorsed on motion dated 10/11/2006. (Before: BDP, CJ., By: AH) [Entry date Oct 20 2006] [AM]

* * *

11/14/06 Order FILED DENYING Petition for rehearing by Appellant Klein & Co. Futures, Inc., endorsed on motion dated 10/11/2006, Order FILED DENYING petition for rehearing en banc by Appellant Klein & Co. Futures, Inc., endorsed on motion dated 10/11/2006. (AH) [Entry date Nov 15 2006] [AM]

* * *

5/25/07 Writ of Certiorari GRANTED. [Entry date Jun 1 2007] [AM]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

KLEIN & CO. FUTURES, INC.,

Plaintiff,

-against-

BOARD OF TRADE OF THE CITY OF NEW YORK, INC., FIRST WEST TRADING, INC., NORMAN EISLER, MARK D. FICHTEL, ALBERT WEIS, JEFF SOMAN, CHARLES SWEENEY, AL PERES, CHRIS MEEK and "JOHN DOE" 1 through 10, NEW YORK CLEARING CORPORATION, GEORGE HAASE, LAWRENCE GULITTI, BRYAN SAYLER, HITESH TRIVEDI, and "RICHARD ROE" 1 THROUGH 10, NEW YORK COTTON EXCHANGE, INC., NEW YORK FUTURES EXCHANGE, INC., JOSEPH O'NEILL, WALTER FAIR, EVAN THOMAS, JOSEPH JACH and "PETER POE" 1 through 10.

Defendants,

----------X

Case #

COMPLAINT

00 CIV. 5563

Plaintiff Klein & Co. Futures, Inc., by its attorneys, Alonso, Ferrigno & Andalkar, P.C., as and for its complaint against the defendants, alleges and sets forth as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this case pursuant to 28 U.S.C.A. § 1331, in that this action arises under the laws of the United States, more particularly, the Commodities Exchange Act ["CEA"] and the Code of Federal Regulation ["C.F.R."], as hereinafter more fully appears. Because they arise under the same set of facts and transactions, this Court may exercise pendent jurisdiction over the common law claims asserted by Plaintiff.

2. Venue is properly lodged in this Court, pursuant to 28 U.S.C. § 1391(b) and 7 U.S.C. § 25(c). Plaintiff and Defendants reside and are found in this District, and a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

THE PARTIES AND COMMON ALLEGATIONS

3. Plaintiff Klein & Co. Futures, Inc., [hereinafter referred to as "Klein & Co."] is a New York corporation with its principal place of business located at 90 West Street, New York, NY 10006. Klein & Co. is a Futures Commission Merchant ["FCM"] and provides other financial services.

4. Upon information and belief, Defendant First West Trading, Inc. [hereinafter "First West"] is a New York corporation with its principal place of business at 4 Pinebrook Drive, White Plains, NY 10605. First West is in the business of trading commodities and is a customer of Plaintiff Klein & Co.

5. Upon information and belief, Defendant Norman Eisler is [hereinafter "Eisler"] is [sic] an adult individual

whose last known address is 4 Pinebrook Drive, White Plains, NY 10605.

6. Upon information and belief, Eisler is a principal of First West.

7. At all times relevant hereto, Eisler was the chairman of the New York Futures Exchange, Inc. and on the Settlement Committee for Pacific Stock Exchange Technology Index Futures Contract and Options thereon [hereinafter "P-Tech Futures and Options"].

8. A Settlement Committee for a contract (i.e. a commodity) is, *inter alia,* responsible, using an arithmetic formula, for calculating the settlement price of a particular contract or option.

9. P-Tech Futures and Options is a composite index of one hundred tech stocks compiled by the Pacific Stock Exchange.

10. At all times relevant herein, Eisler was responsible for the calculation of the settlement price of P-Tech Futures and Options, upon information and belief, by himself or in conjunction with other members of P-Tech Futures and Options Settlement Committee.

11. Defendant Board of Trade of the City of New York, Inc. [hereinafter "NYBOT"] is a New York not-for-profit corporation with its principal place of business in the City, County and State of New York.

12. NYBOT is a board of trade created and operating pursuant to various laws and regulations, including, but not limited to, the CEA. NYBOT maintains contract markets for the trading of futures contracts and options in

commodities such as coffee, sugar, cocoa, cotton, and financial products by public customers and other entities.

13. Upon information and belief, defendant Mark D. Fichtel [hereinafter "Fichtel"] is an adult individual, doing business in the City, County and State of New York.

14. At all times relevant hereto, Fichtel was the President and Chief Executive Officer of the NYBOT.

15. Upon information and belief, Defendant Albert Weis [hereinafter "Weis"] is an adult individual doing business in the City, County and State of New York.

16. At all times relevant hereto, Weis was the Chairman of the NYBOT.

17. Defendants John Does 1 through 10 are Board members of the NYBOT who have not heretofore been named, but who have taken actions similar or identical to those of the other individual defendants.

18. Defendants Fichtel, Weis, and John Doe 1 through 10 shall hereinafter be collectively referred to as "NYBOT Board."

19. Upon information and belief, Defendant New York Clearing Corporation [hereinafter "NYCC"] is a New York corporation, with its principal place of business in the City, County and State of New York. Although a separate corporate entity, NYCC is owned and/or controlled by NYBOT and/or by the same persons or entities which control NYBOT.

20. NYCC clears all trades transacted on NYBOT and, *inter alia*, is responsible for assuring that all such trades are properly consummated.

21. Upon information and belief, defendant George Haase [hereinafter "Haase"] is an adult individual doing business in the City, County and State of New York.

22. At all time [sic] relevant hereto, Haase was the President of the NYCC and, upon information and belief, a board member thereof.

23. Upon information and belief, defendant Lawrence Gulitti [hereinafter "Gulitti"] is an adult individual doing business in the City, County and State of New York.

24. At all times relevant hereto, Gulitti was the Senior Vice President of the NYCC.

25. Upon information and belief, defendant Bryan Sayler [hereinafter "Sayler"] is an adult individual doing business in the City, County and State of New York.

26. At all times relevant hereto, Sayler was the Vice President of the NYCC.

27. Upon information and belief, defendant Hitesh Trivedi [hereinafter "Trivedi"] is an adult individual doing business in the City, County and State of New York.

28. At all times relevant hereto, Trivedi was an Assistant Vice President of the NYCC.

29. Upon information and belief, defendants Richard Roe 1 through 10 are members of the board of the NYCC that have not heretofore been named, but served as board members at all times relevant hereto.

30. Defendants Haase, Gulliti, Sayler, Trivedi, and Richard Roe 1 through 10 are hereinafter collectively referred to as the "NYCC Board."

31. Upon information and belief, Defendant New York Cotton Exchange, Inc., [hereinafter the "Cotton Exchange"] is a New York corporation with its principal place of business in the City, County and State of New York.

32. Upon information and belief, Cotton Exchange is the parent corporation of the New York Futures Exchange, Inc.

33. Defendant New York Futures Exchange, Inc., [hereinafter "NYFE"] is a New York corporation, with its principal place of business in the City, County and State of New York.

34. NYFE is a contract market that has been designated by the Commodity Futures Trading Commission to serve as a market for the trading of various commodity futures and options thereon, including, but not limited to P-Tech Futures and Options.

35. In order for NYFE to be designated as a contract market to trade the commodities alleged herein, certain conditions must exist for such designation and must be met on an ongoing basis as follows:

(a) The governing board must provide for prevention of dissemination by the board or any member thereof of false or misleading or knowingly inaccurate reports conditions that affect or tend to affect the price of any commodity in interstate commerce.

(b) The governing board must provide for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(c) The governing board must ensure that transactions within the contract market are not contrary to the public interest.

36. Upon information and belief, defendant Joseph O'Neill [hereinafter "O'Neill"] is an adult individual doing business in the City, County and State of New York and residing in the County of Nassau, State of New York.

37. At all times relevant hereto, O'Neill was the Executive Vice-President/President-Financial Products of the NYBOT. O'Neill was, *inter alia*, responsible for the financial products of NYBOT and NYFE, including, but not limited to, the P-Tech Futures and Options Index.

38. Upon information and belief, Defendant Jeff Soman [hereinafter "Soman") is an adult individual doing business in the City, County and State of New York.

39. At all times relevant hereto, Soman was a board member of the New York Futures Exchange, Inc.. [sic]

40. Upon information and belief, defendant Charles Sweeney [hereinafter "Sweeney"] is an adult individual doing business in the City, County and State of New York.

41. At all times relevant hereto, Sweeney was a board member of the New York Futures Exchange, Inc.

42. Upon information and belief, defendant Al Peres [hereinafter "Peres"] is an adult individual doing business in the City, County and State of New York.

43. At all times relevant hereto, Peres was a board member of the New York Futures Exchange, Inc.

44. Upon information and belief, defendant Chris Meek [hereinafter "Meek"] is an adult individual doing business in the City, County and State of New York.

45. At all times relevant hereto, Meek was a board member of the New York Futures Exchange, Inc. Meek, Soman and Sweeney shall hereinafter be referred to as the "NYFE Board."

46. Upon information and belief, defendant Walter Fair [hereinafter "Fair"] is an adult individual, doing business in the City, County and State of New York.

47. At all time relevant hereto, Fair was a member of the P-Tech Futures and Options Settlement Committee.

48. Upon information and belief, defendant Evan Thomas [hereinafter "Thomas"] is an adult individual doing business in the City. County and State of New York.

49. At all time relevant hereto, Thomas was a member of the P-Tech Futures and Options Settlement Committee.

50. Upon information and belief, defendant Joseph Jach [hereinafter "Jach"], is an adult individual doing business in the City, County and State of New York.

51. At all time relevant hereto, Jach was a member of the P-Tech Futures and Options Settlement Committee.

52. Upon information and belief, defendants Peter Poe 1 through 10 are members of the P-Tech Futures and Options Settlement Committee who have not heretofore been named but served on the P-Tech Futures and Options Settlement Committee at all times relevant hereto.

53. Defendants Eisler, Fair, Thomas, Jach and Peter Poe 1 through 10 are hereinafter collectively referred to as "P-Tech Futures and Options Settlement Committee."

54. Defendants NYBOT, the NYBOT Board, NYCC, NYCC Board, Cotton Exchange, NYFE and P-Tech Futures and Options Settlement Committee have a quasi-governmental role in managing, operating and trading of contract markets (i.e. commodities market). As such, they *inter alia,* regulate the industry, conduct investigations, provide an orderly, fair market for the contract markets within their purview. All defendants except First West shall hereinafter be referred to as the "Industry Defendants."

55. Defendant First West was a long-term customer of Klein & Co. assigned account number 05-09489. First West purchased and sold, among other things, contracts in P-Tech Futures and Options from the inception of the P-Tech Futures and Options contract market in or about April of 1996 until May 15, 2000.

56. At all times relevant hereto, Eisler effected unsolicited trades for the account of First West, without input, counsel, advice or any type of recommendation whatsoever from Klein & Co.

57. Klein & Co. had no equity or financial interest in the First West account nor did Klein & Co. exercise control over the trading in said account.

58. During this time, Eisler and the P-Tech Futures and Options Settlement Committee, under the supervision and direction of the other Industry Defendants and the employees thereof, were responsible for formulating, setting and publishing the settlement price of P-Tech

Futures and Options. The settlement price determines the price/value of an individual contract as used, *inter alia*, to calculate margin requirements in customers' accounts.

59. Eisler, through First West and in the First West account, entered into transactions of numerous P-Tech Futures and Options Contracts.

60. Upon information and belief, Eisler and the P-Tech Futures and Options Settlement Committee, either intentionally, or acting in bad faith with gross negligence and recklessness so egregious as to constitute a danger and harm to the public, grossly miscalculated the settlement price of P-Tech Futures and Options.

61. The incorrect information regarding the settlement price was disseminated by NYBOT and was used by Klein & Co. to calculate margin requirements applicable to First West's account and by other clearing members to calculate margin requirements applicable to their customers' accounts.

62. This miscalculation of the P-Tech Settlement Price, during the period commencing on an unknown date earlier than March, 2000 and continuing through on or about May 15, 2000 caused the margin calculations for First West's account to be incorrect.

63. Upon information and belief, prior to 1999, all responsibility for supervision, regulation. investigation and certain other quasi-governmental duties of the NYFE were delegated to NYBOT and NYBOT assumed such duties and responsibilities.

64. Upon information and belief, commencing in or about March, 2000, if not earlier, the Industry Defendants received or became aware of complaints from various

individuals in the industry including, but not limited to floor trading members of NYFE, regarding the P-Tech Futures and Options Settlement Committee's miscalculation of the P-Tech Futures and Options Settlement Prices.

65. Upon information and belief, at or about the time that the complaints were received, two clearing member companies, Saul Stone & Co., L.L.C. ["Saul Stone"] and Spear Leeds & Kellogg [hereinafter "SLK"], both of whom had officers of their respective companies on the NYFE board, ceased to effect transactions in P-Tech Futures and Options and, upon information and belief, SLK thereafter refused to accept orders from customers to do so.

66. Hull Trading Co., L.L.C. ["Hull Trading"], a division or subsidiary of Goldman Sachs, Inc. and a market maker in P-Tech Futures and Options, ceased to effect transactions in P-Tech Futures and Options.

67. Saul Stone and SLK are clearing members of all commodities markets under the supervision of NYCC and NYBOT.

68. Upon information and belief, Thomas, who was also a member of the P-Tech Futures and Options Settlement Committee was employed by Timber Hill Corp., a company that traded in P-Tech Futures and Options as a major counter party.

69. Upon information and belief, Timber Hill Corp. acquired such information regarding the incorrectness of the P-Tech Settlement Prices as a result of the participation of Thomas on the P-Tech Settlement Committee.

70. Upon information and belief, Hull Trading acquired such information regarding the incorrectness of the P-Tech Settlement Prices as a result of the participation of Meek on the P-Tech Settlement Committee.

71. Upon information and belief, Saul Stone acquired such information regarding the incorrectness of the P-Tech Settlement Prices as a result of the participation of Soman on the NYFE Board.

72. Not one of the NYBOT, the NYCC, the Cotton Exchange, or the NYFE nor any of the individual defendants, including, but not limited to the members of the P-Tech Settlement Committee, placed members of the industry or the public on notice of the miscalculation of the P-Tech Settlement Price or of complaints regarding the P-Tech Settlement Price.

73. Upon information and belief, not one of the NYBOT, the NYCC, the Cotton Exchange, the NYFE, or any of the individual defendants conducted any investigation, inquiry or other examination of the facts underlying any complaint regarding the P-Tech Settlement Prices of which they, or any of them, became aware.

74. At all times relevant hereto, pursuant to Section 5.4 of the NYCC rules, clearing members were required to deposit Ten (10%) of their adjusted net capital or an amount determined by a market activity formula, into the Guaranty Fund of the NYCC.

75. Effective March 31, 2000, this rule was amended to require that the guaranty requirement be the greater of 10% of the member's adjusted net capital or a new risk-based arithmetical calculation.

76. In late April, 2000, despite the amended rule, Defendant Haase, individually and on behalf of NYCC and NYBOT, informed Klein & Co. that Klein & Co. could deposit Twenty (20%) per cent of Klein & Co.'s adjusted net capital stating that "it would be too much of a hardship for Klein & Co."

77. Haase knew, or had reason to know, that in order to meet the amended Guaranty Fund requirements, Klein & Co. would have to force Eisler to liquidate his position in P-Tech Futures and Options.

78. There was no legal authority for Haase to create a 20% of adjusted net capital requirement just for Klein & Co.

79. Upon information and belief, Haase and NYCC exempted Klein & Co. from the Guaranty Fund requirements in order to benefit Eisler, to assure Eisler's continued participation in the market through Klein, and based upon his knowledge that the P-Tech Settlement Committee was manipulating the P-Tech Settlement Price.

80. On Thursday, May 11, 2000, the margin call in First West's account was computed to be Seven Hundred Thousand ($700,000.00) Dollars based upon the miscalculated price published by the Industry Defendants.

81. Klein & Co. contacted Eisler in the morning of May 11, 2000 with respect to First West's margin requirement and told him to liquidate his position and/or deposit funds to First West's account. Eisler responded that he did not know if he had enough funds to cover the margin.

82. Immediately thereafter, Klein & Co. instructed Eisler to liquidate the P-Tech Futures and Options position in the First West account, and Eisler consented.

83. Eisler then liquidated approximately 130 lots of P-Tech Futures and Options, but purchased 250 additional lots of P-Tech Futures and Options, as "liquidation for straddle," a term used within the industry to denote a position which will hedge the risk of the position. In this way Eisler was attempting to hedge the differences in strike prices to minimize his risk of loss.

84. On May 12, 2000, Eisler, while present in the offices of Klein & Co., stated to Klein & Co. that he did not have the funds to cover the margin. Eisler further advised Klein & Co. that the market was illiquid and that he would not be able to liquidate the P-Tech Futures and Options prior to the opening of the market.

85. On Friday, May 12, 2000, prior to the opening of the market, without knowledge that the settlement price was incorrect, Klein & Co. contacted O'Neill and expressed its concern regarding the illiquidity of P-Tech Futures and Options, Eisler's inability to meet First West's margin call, Eisler's stated inability to liquidate First West's contracts.

86. The market for P-Tech Futures and Options was illiquid at this time, in large part due to the fact that several other companies with prior large positions, including, but not limited to, Hull Trading. Saul Stone and SLK, had previously liquidated most or all of their P-Tech Futures and Options positions and had refused to re-enter or participate in the market.

87. Upon information and belief, Timber Hill Corp. was the only other major participant in the P-Tech

Futures and Options market and it held a position in most part directly contrary to that maintained by First West. Upon information and belief, the major part of the losses of First West corresponded to gains of Timber Hill Corp.

88. Upon information and belief, the illiquidity of P-Tech Futures and Options was caused by the knowledge possessed by P-Tech Settlement Committee members of the incorrectness of the P-Tech Settlement Price.

89. On the morning of May 12, 2000, Klein & Co. further expressed to O'Neill that there was almost a certainty that the margin deficit in First West's account, if not covered by Eisler, would exceed the assets of Klein & Co. and would ruin Eisler.

90. Klein & Co. then requested that emergency action be taken by the Board, including, but not limited to, issuance of a directive halting trading of P-Tech Futures and Options prior to the opening and liquidating all contract [sic] at the previous day's settlement price.

91. At the time that this request was made by Klein & Co. to O'Neill, the P-Tech Futures and Options market had collapsed and was entirely illiquid.

92. From the opening of business on May 15, 2000 to the close of the market that same day, the Board of NYFE never met to review the conditions of the market.

93. O'Neill stated that he saw no need for emergency action since Klein had met its margin and declined to take any action whatsoever responsive to the situation.

94. Rather than take emergency action, O'Neill contacted Hull Trading, a non-clearing member of NYBOT,

to determined [sic] if Hull Trading might take over First West's position.

95. On Friday, May 12, 2000, despite Klein's request and in spite of the pending circumstances, no one at NYBOT or NYCC requested that the NYFE Board convene to review the circumstances.

96. Upon information and belief, Eisler did not settle or participate in the settlement of the P-Tech Futures and Options settlement price on and after Monday, May 15, 2000.

97. Upon information and belief, the P-Tech Settlement Prices were incorrect up through and including May 12, 2000.

98. Margin is computed at the close of a business day using the settlement price [sic] is due and is payable the next business day. Computation of the correct P-Tech Settlement Price on Monday, May 15, 2000 became due by First West on Tuesday, May 16, 2000.

99. Upon information and belief, on May 15, 2000, Eisler's membership and membership privileges at NYBOT were suspended.

100. Upon information and belief, on Monday, May 15, 2000, the settlement price was correctly calculated by the Settlement Committee and, upon such settlement by the Committee without Eisler, the P-Tech Futures and Options Settlement Price for said dates was grossly divergent from the previous settlement prices computed by or under the supervision of Eisler. The divergence in the P-Tech Settlement Price from May 15, 2000 forward was far more detrimental to First West than were the

miscalculated prices from the period prior to May 15, 2000.

101. As a result of the correct recalculation of the settlement price of P-Tech, First West's account debit was calculated to be to Four Million Five Hundred Thousand ($4,500,000.00) dollars as of the close of business Monday, May 15, 2000, the same day that Eisler's membership was suspended.

102. At the opening of business on Tuesday, May 16, 2000, with such a large margin deficit, and no apparent funding available to cover the margin deficit from First West or Eisler, Klein & Co. was required to take an immediate charge against its net capital for the amount of First West's margin call deficiency.

103. At the opening of business on May 15, 2000, Klein & Co.'s adjusted net capital was approximately Two Million Six Hundred Fifty Thousand ($2,650,000.00) Dollars.

104. Using Two Million Six Hundred Fifty Thousand ($2,650,000.00) Dollars as a basis, the effect of the capital charge for First West's account decreased Klein & Co.'s net capital below the minimum requirement of Two Million ($2,000,000.00) Dollars.

105. Because the net capital was below Two Million ($2,000,000.00) Dollars, Klein & Co. was then non-compliant with the minimum capital required $2,000,000.00 of a clearing member of NYMEX and NYCC.

106. Member Futures Commission Merchants are obligated by the rules of the NYBOT, NYCC, NYFE and Cotton Exchange to have certain minimum capital funds.

107. Because Klein & Co.'s net capital fell below Two Million ($2,000,000.00) dollars, the NYBOT and the NYBOT Board, the NYFE, the NYFE Board and the Executives Committees of the Coffee, Sugar & Cocoa Exchange and the Cotton Exchange suspended the membership privileges of Klein & Co. for failure to meet the minimum financial requirements at the close of business on May 15, 2000.

108. As is the custom and the rule in the securities industry, clients of brokerage houses often maintain their assets with their brokerage house or FCM.

109. Funds of customers of any brokerage house or FCM maintained by the brokerage house or FCM are not counted, included, treated, designated or situated as funds of the brokerage house or FCM and remain the funds of the customers [hereinafter "Customer Funds"].

110. NYBOT and the NYCC thereafter wrongfully confiscated a sum of money and assets in the amount of approximately Eight Million ($8,000,000.00) Dollars in Customer Funds belonging to customers of Klein & Co. that were held in Klein & Co.'s segregated account at Chase Manhattan Bank.

111. On May 15, and 16, 2000, meetings were held in which false, defamatory and disparaging remarks regarding Klein & Co. were heard to be made and incorrect information disseminated, as more particularly detailed herein.

(a) On Tuesday, May 16, 2000, at 3:00 p.m. at an emergency general membership meeting held at the NYBOT's boardroom on the 8th Floor of 4 World Trade Center, New York, NY at which

Klein & Co. was represented by David Klein, several members made false and defamatory statements regarding Klein & Co., stating:

(i) One member, unknown to Plaintiff, was heard to say "Let's hear what Klein has to say." Weis, the Chairman of the Board of NYBOT, refused to allow Klein & Co. or any of its representatives to speak by stating "who cares what Klein has to say anyway?"

(b) On May 17, 2000, the defendants issued press releases which expressly and impliedly stated falsely that Klein & Co. had seized assets of its other clients to cover losses, and which press releases were distributed to all major financial publications, posted on the Internet, made available to all entities in the financial community and to all news media throughout the world. The press release stated, in pertinent part, as follows:

(i) "Specifically, NYBOT will pay the innocent customers of Klein whose funds were utilized by Klein to meet its obligations to the [New York] Clearing Corporation."

(ii) "'I am pleased at the speed and sense of fairness with which the NYBOT Board has moved in addressing this serious issue,' stated Mark D. Fichtel, NYBOT President and CEO. 'The Board obviously has taken into account the concerns and best interests of our members, and the members of other exchanges, who cleared through Klein & Co. Futures, Inc. by deciding to "make whole" the losses they incurred this week.'"

(iii) "'In fact,' added Mr. Fichtel, 'as a Designated Self Regulatory Organization, (DSRO) NYMEX

was in a position to monitor Klein's activities. In that regard, they failed to pick up on Klein's treatment of customer funds that led to the serious incidents earlier this week.'"

(iv) The press release touted the "valiant efforts of the [NYBOT] Board to do the right thing," thereby implying that Klein & Co. had resisted efforts to "do the right thing" in returning Customer Funds to Klein & Co.'s customers.

112. These statements were false and untrue and known to be false and untrue by the publishers thereof when made.

113. These statements were directly related to Klein & Co.'s industry and business reputation and were published to the general public, with specific direction to Klein & Co.'s peers, customers and industry members.

114. On and after May 16, 2000, NYBOT and NYCC were given notice by, *inter alia,* Klein & Co. and the New York Mercantile Exchange, that their confiscation of Customer Funds held by Klein & Co. was wrongful.

115. NYBOT and NYCC, in bad faith, refused to relinquish their dominion and control of Customer Funds formerly held by Klein & Co. until litigation to release said funds was commenced against them by the New York Mercantile Exchange.

116. As a direct result of the actions of the defendants, on May 16, 2000, Klein & Co. ceased to operate as a FCM, closed its offices, terminated its employees and commenced to wind up its business, which ceased to operate as of the close of business May 15, 2000.

COUNT I

AGAINST NYFE FOR VIOLATIONS OF RESPONSIBILITIES OF A CONTRACT MARKET

117. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 116 of the complaint with the same force and effect as though more fully set forth herein.

118. The § 5b of the Commodities Exchange Act states, in pertinent part:

> The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules, regulations, or orders of then [sic] Commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a 'contract market'. . . .

119. NYFE, under 7 U.S.C. § 7(4) has a responsibility to maintain a stable and objective contract market. The Board and Settlement Committee failed to exercise regulatory responsibility in that, *inter alia,* in bad faith, they, and each of them, failed to supervise, failed to detect the errors in the P-Tech Settlement Price and violations of various rules and regulations, and then deliberately failed in their duty to remedy the situation in a responsible fashion.

120. NYFE failed to meet this responsibility by allowing incorrect and dishonest prices regarding P-Tech Futures and Options to be disseminated by Eisler and the P-Tech Futures and Options Settlement Committee.

121. The incorrect settlement prices caused the margin computation to skew, thereby creating a perception of lower margin risk to FCMs and potential financial disaster to FCMs, who could not anticipate or prepare for the drastic change in P-Tech Settlement Price of the P-Tech Futures and Options when the error was corrected.

122. Knowledge by various Industry Defendants of the incorrectness of the P-Tech Futures and Options Settlement Price, acquired in their capacity as members of NYBOT Board and P-Tech Futures and Options Settlement Committee, prompted said members' employers or affiliated companies to withdraw from the P-Tech Futures and Options market, resulting in the further illiquidity of the P-Tech Futures and Options market.

123. Despite the knowledge by various Industry Defendants of the incorrectness of the P-Tech Futures and Options Settlement Price, acquired in their capacity as members of NYBOT Board and P-Tech Futures and Options Settlement Committee, and of Eisler's actions and complaints relating thereto, the defendants took no action to rectify this situation, despite the fact that it destroyed the P-Tech Futures and Options market and Klein & Co.

124. In addition to, and not in lieu of the foregoing, the acts and omissions of the defendants consisted of a complete failure of market surveillance, failure in bad faith to take required action, a complete failure to maintain an orderly market, and bad faith attempts to support a collapsed, illiquid, contrived marketplace.

125. Klein & Co. contends that, based upon its foregoing actions and omissions with respect to P-Tech Futures and Options, the NYFE should not be allowed to continue to maintain and supervise any contract market

nor be designated as a contract market for the trading of any futures contracts or options thereon.

126. Upon information and belief industry Defendants contend that the NYFE should not be allowed to continue to maintain and supervise such contract markets as it has heretofore maintained and supervised.

127. In contravention of §5(7) of the CEA, the actions of the NYFE have been contrary to the public interest.

128. The Industry Defendants are required to provide for the prevention of manipulation and the cornering of any commodity by dealers and operators.

129. The Industry Defendants were obligated to exercise reasonable diligence in observing and making themselves aware of market conditions in order to carry out their regulatory responsibilities.

130. Because of the Industry Defendants' relation to the public, they are bound to act with the utmost objectivity, impartiality, honesty and good faith, despite their obligation to act where their own private interests are concerned.

131. The defendants failed or refused to conduct themselves in accordance with the foregoing duties of honesty and good faith. The defendants' dominant and decisive motivation and intent was to advance the defendants' individual and/or corporate self-interest and/or to derive direct personal gain, rather than to advance the public interest, all of which was in bad faith.

132. The actions of the Industry Defendants have been motivated by bad faith and ulterior motives, as is indicated by the following actions and inaction:

(a) The Industry Defendants did not supervise the trading of Eisler, particularly with respect to P-Tech Contract and Options over which he had supervisory authority.

(b) Eisler manipulated the P-Tech Settlement Price for his own benefit and gain and the other Industry Defendants encouraged, tolerated and concealed his activities.

(c) The defendants took no action with respect to complaints received during March, April and May, 2000, with respect to Eisler's activities.

(d) The defendants took no action with respect to complaints received on the trading of P-Tech Futures and Options.

(e) The Industry Defendants acted in self-interest, rather than in the interest of a liquid, fair market and in the public interest, by either withdrawing from the contract market or ignoring the lack of viability and liquidity of the market, rather than reporting, investigating and/or remedying same.

(f) The Industry Defendants acted to protect Eisler by excusing certain financial requirements of Klein & Co. so that he would not have his trading curtailed.

(g) The Industry Defendants ignored warnings from Klein & Co. and other market participants prior to the suspension of Eisler.

(h) The Industry Defendants indicated in meetings that they had no interest in granting any hearing of Klein & Co.'s allegations regarding Eisler's market manipulation with the complicity of the other defendants.

(i) The Industry Defendants have arbitrarily and capriciously labeled Klein & Co. the wrongdoer in order to deflect attention from their own wrongdoing with respect to this matter, including, but not limited to casting aspersions regarding the integrity and competence of the New York Mercantile Exchange, which committed no wrongdoing with respect to the events and, after May 15, 2000, only sought to restore to Klein & Co.'s customers the Customer Funds converted by the NYBOT and NYCC.

(j) The Industry Defendants took no action to prevent Eisler from establishing incorrect settlement prices for P-Tech Futures and Options while he (through his company First West) was a major participant in the market.

(k) The Industry Defendants facilitated and encouraged Eisler, individually and in his capacity, *inter alia,* as a member of the P-Tech Settlement Committee and as the Chairman of the Board of NYFE, to dominate the contract market for P-Tech Futures and Options to the detriment of the public and the contract market and for his own profit and gain.

(l) The Industry Defendants refused to elicit from the president of Klein & Co. a description of the events, slandered him as a liar before Klein & Co.'s peers in the industry, and then libeled Klein & Co. in press releases issued to the industry, news media and public and published on the Internet.

(m) At the meeting of May 15, 2000, Thomas Pedafee, the President of Timber Hill Corp., stated over speakerphone to all present that Timber Hill Corp. did not know how the P-Tech

Settlement Committee had generated the P-Tech Settlement Prices and that Timber Hill Corp. considered them unreliable for a period of time (unknown to plaintiff) prior to May 15, 2000.

(n) The Industry Defendants falsely accused Klein & Co. of misappropriating its Customer Funds.

133. The foregoing acts were inconsistent with, contrary to and inviolation [sic] of their duties and responsibilities to advance the public interest and to act with the utmost objectivity, impartiality, honesty and good faith.

134. Klein & Co. has no adequate remedy at law.

135. There presently exists a justiciable controversy which requires an adjudication by a court of competent jurisdiction.

136. Absent an adjudication and the issuance of a declaratory judgment, Klein & Co. and the public at large will suffer irreparable injury.

COUNT II

AGAINST ALL DEFENDANTS FOR VIOLATION *INTER ALIA*, OF § 4b OF THE CEA AND 17 CFR § 33.9

137. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 136 of the complaint with the same force and effect as though more fully set forth herein.

138. § 4b of the CEA, entitled "Fraudulent Transactions Prohibited" states, in pertinent part, as follows:

(a) It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent,

> or employee of any member . . . or (2) for any person . . . (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof –
>
> (i) to cheat or defraud or attempt to cheat or defraud such other person;
>
> (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;
>
> (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract. . . .

139. 17 C.F.R. § 33.9 states, in pertinent part, as follows:

> It shall be unlawful for any person –
>
> * * *
>
> (d) To manipulate or attempt to manipulate the market price of any commodity option on or subject to the rules of any contract market. . . .

140. 17 C.F.R. § 33.10 states, in pertinent part, as follows:

> It shall be unlawful for any person directly or indirectly –
>
> (a) To cheat or defraud or attempt to cheat or defraud any other person;
>
> (b) To make or cause to be made to any other person any false report or statement thereof or cause to

be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever

in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

141. Rule 9.01 of the By-Laws and Rules of the Cotton Exchange, states, in pertinent part, as follows:

No person under the jurisdiction of the New York Cotton Exchange (NYCE®) or its affiliates; including the Citrus Associations of the New York Cotton Exchange, Inc. (CITRUS) and the New York Futures Exchange, Inc. (NYFE), (collectively the Exchange):

(a) Shall engage in any misconduct in his relations to the Exchange or to any member of the Exchange;

(b) Shall engage in any dishonest or fraudulent transaction relating to contracts on the Exchange;

(c) Shall engage in any conduct detrimental to the best interests of the Exchange;

(d) Shall engage in any conduct inconsistent with just and equitable principles of trade.

142. First West, through Eisler, violated these provisions as it willfully caused and enabled these P-Tech Futures and Options to be traded in his proprietary account through First West at Klein & Co. knowing that the P-Tech Settlement Prices were being artificially manipulated.

143. First West willfully deceived Klein & Co. because its owner, Eisler, knew that the P-Tech Settlement Prices and therefore the margin amount required by Klein & Co. was incorrect.

144. Eisler willfully as, *inter alia,* a member of the contract market, Chairman of NYFE and member of the P-Tech Settlement Committee, which determines the Settlement Price of P-Tech Futures and Options and otherwise regulates trading thereof in issue, defrauded Plaintiff by incorrectly, either willfully acting in bad faith or through gross negligence, causing the P-Tech Settlement Price to be improperly calculated for at least two months.

145. The miscalculation of the P-Tech Settlement Price created substantial financial benefit to Eisler, a complete disruption of a fair market for P-Tech Futures and Options, no benefit to Klein & Co. and an undisclosed risk of financial ruin or windfall at the expense of other innocent parties for various other entities.

146. Eisler in bad faith caused false reports regarding the P-Tech Settlement Price to be generated and published.

147. The NYBOT and its Board, as members, agents and employees of members who determine the base price of transactions in interstate commerce, in bad faith, whether willfully or through gross negligence, caused false reports and statements to be generated regarding the P-Tech Settlement Price.

148. NYCC and its Board members, as members, agents and employees of members who determine the base price of transactions in interstate commerce, caused, in

bad faith, whether willfully or through gross negligence, false reports and statements to be generated regarding the P-Tech Settlement Price.

149. Cotton Exchange and its agents, employees, and members who determine the base price of transactions in interstate commerce, caused, whether willfully or through gross negligence, false reports and statements to be generated regarding the P-Tech Settlement Price.

150. NYFE and its Board and the P-Tech Futures and Options Settlement Committee as members, agents and employees of members who determine the base price of transactions in interstate commerce, caused, in bad faith, whether willfully or through gross negligence, false reports and statements to be generated regarding the P-Tech Settlement Price.

151. Upon information and belief, NYFE's market surveillance department, and other divisions of NYFE, including, but not limited to NYFE's control committee, had notice of said market manipulation through, *inter alia,* its receipt and/or review of daily reports.

152. NYFE, its officers, directors, employees and its divisions and departments, deliberately and in bad faith failed to advise Plaintiff and failed to take action even when other customers and clearing members withdrew from the market for P-Tech Futures and Options.

153. This false information regarding the P-Tech Settlement Price disseminated by the Industry Defendants was used to calculate margin, and, in turn, the adjusted capital requirements of Klein & Co.

154. The false settlement price caused either the appearance of a lower margin requirement or the lack of a

margin deficiency on the part of First West, and the appearance of greater adjusted capital for Klein & Co.

155. The actions of the defendants were in violation of, *inter alia,* the laws, rules and regulations cited above.

156. Due to the acts of Eisler, the NYBOT and its Board members, NYCC and its board members, Cotton Exchange, and its Board, the NYFE and its board members, the P-Tech Futures and Options Settlement Committee, the officers, directors and employees of the foregoing, Klein & Co. fell below the minimum capital requirements and was suspended, thereby terminating its ability to do business. The result of this was, *inter alia,* Klein & Co. was forced, after forty years, out of business, Klein & Co.'s name and goodwill was sullied in the newspapers and throughout the financial world, and Klein & Co.'s ability to ever re-enter the commodities industry in any capacity whatsoever was destroyed.

157. As a direct result of the actions and omissions of the defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

158. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

159. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT III

AGAINST ALL DEFENDANTS FOR VIOLATION OF OF [sic] § 9 OF THE CEA'S INSIDER TRADING PROSCRIPTION

160. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 160 of the complaint with the same force and effect as though more fully set forth herein.

161. §9(f)(1) of the CEA states, in pertinent part, as follows:

It shall be a felony for any person –

> (1) who is an employee, member of the governing board, or member of any committee of a board of trade, contract market, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account. . . .

162. First West willfully violated this provision because one of its principals, Eisler, as a member of the contract market and as the Chairman of the Board of NYFE, who determines the P-Tech Settlement Price, traded P-Tech Futures and Options for his own benefit through First West.

163. The Industry Defendants violated their duty to enforce the rules and regulations of the CEA and failed in that supervisory duty by allowing Eisler to manipulate the P-Tech Settlement Price, a necessary element in Eisler's manipulative scheme.

164. NYCC and its members of the governing board and/or members of committees of a board of trade violated their duty to enforce the rules and regulations of the CEA and failed in their supervisory, regulatory and investigatory duty respecting the manipulation of the P-Tech Settlement Price.

165. Cotton Exchange and its members of the governing board and/or members of committees of a board of trade violated their duty to enforce the rules and regulations of the CEA and failed in that supervisory duty.

166. NYFE, its Board and Control Committee, and the P-Tech Contract and Options Settlement Committee violated this section because they have a duty to enforce the rules and regulations of the CEA and failed in that supervisory, regulatory and enforcement duty.

167. As a direct result of the actions and omissions of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

168. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

169. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT IV

AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

170. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 169 of the complaint with the same force and effect as though more fully set forth herein.

171. Eisler had a fiduciary duty to honestly and fairly discharge his duties and responsibilities of Chairman of NYFE and member of the Settlement Committee in accordance with all the rules and regulations of the various governing boards.

172. Eisler breached that duty by using his position on the Settlement Committee, whether willfully of [sic] through gross negligence and reckless disregard of his duties in bad faith, to incorrectly set the P-Tech Settlement Price for his own benefit and interest, thereby causing the original margin calculation of P-Tech Futures and Options to be incorrect.

173. The acts of Eisler directly caused Klein & Co. to incorrectly calculate the price and margin amount cleared through the NYCC for First West's account.

174. Said miscalculation by Klein & Co. resulted in a lower margin requirement in First West's account.

175. O'Neill had a fiduciary duty to perform his job as Executive Vice-President/President-Financial Products, which placed O'Neill in charge of all financial products of NYFE in accordance with all applicable rules and regulations of the CEA and CFR and with the due

diligence, honesty and principles of an officer of NYFE and NYBOT.

176. O'Neill breached said duty and exercised bad faith when he, *inter alia,* failed to contact any Board member of the NYFE to take emergency action to stop the collapse of the market at the expense of Plaintiff and take other action to investigate, remedy or ameliorate the situation.

177. O'Neill breached said duty and exercised bad faith when his sole activity (upon being advised by Klein & Co. of the conditions of the market) was to contact Hull Trading in order to solicit and ascertain whether Hull Trading would consider taking over First West's portion in the market. Such actions were exercised in bad faith since O'Neill knew that the only way Hull Trading could take over First West's position in the market was through emergency action of the Board since Hull Trading was not a clearing member of NYFE.

178. O'Neill breached said duty and exercised bad faith when he failed to take action warranted by the circumstances, including, but not limited to, the closing of the market on May 12, 2000.

179. NYBOT and its board members, committees, divisions, departments, officers, and its employees, had a duty and responsibility, *inter alia,* to enforce the various rules and regulations which governed Eisler, the P-Tech Settlement Committee, P-Tech Futures and Options and to maintain an orderly and efficient market.

180. NYBOT and its board members breached that duty by, *inter alia*, failing to properly supervise its Board, Board members and related entities and their actions,

neglecting complaints, and by violating its responsibilities to maintain a [sic] objective, fair and orderly contract market for P-Tech Futures and Options.

181. NYCC and its officers and board members had a duty and responsibility, *inter alia,* to enforce the various rules and regulations which governed Eisler, the P-Tech Settlement Committee, P-Tech Futures and Options and to maintain an orderly and efficient market.

182. NYCC and its officers and board members breached that duty by failing to properly utilize the Guaranty Fund rather than seizing the Customer Funds.

183. Cotton Exchange and its Board had a duty and responsibility, *inter alia*, to enforce the various rules and regulations which governed Eisler, the P-Tech Settlement Committee, P-Tech Futures and Options and to maintain an orderly and efficient market.

184. Cotton Exchange and its board members breached that duty by knowingly ignoring or failing to discover the actions of Eisler in setting an incorrect P-Tech Futures and Options Settlement Price, by failing to act on or publicize complaints regarding the P-Tech Futures and Options Settlement Price, by acting on said information for their own benefit prior to acting on behalf of the persons to whom they owed a duty, and by acting in concert with Eisler in setting an incorrect P-Tech Settlement Price.

185. NYFE and its board members had a duty and responsibility, *inter alia,* to enforce the various rules and regulations which governed Eisler, the P-Tech Settlement Committee, P-Tech Futures and Options and to maintain an orderly and efficient market.

186. NYFE and its board members breached that duty by failing to discover the actions of Eisler in setting an incorrect P-Tech Futures and Options Settlement Price, by failing to act on or publicize complaints regarding the P-Tech Futures and Options Settlement Price, by acting on said information for their own benefit prior to acting on behalf of the persons to whom they owed a duty, and by acting in concert with Eisler in setting an incorrect P-Tech Settlement Price.

187. The NYFE Control Committee and P-Tech Settlement Committee had a duty and responsibility, *inter alia,* to enforce the various rules and regulations which governed the P-Tech Settlement Committee, P-Tech Futures and Options and to maintain an orderly and efficient market. In addition to, and not in lieu of the foregoing, the members of the P-Tech Settlement Committee were obligated to discharge their duties with due diligence, to refrain from acting in self-interest.

188. The P-Tech Settlement Committee breached that duty by, *inter alia,* knowingly ignoring or failing to discover the actions of Eisler in setting an incorrect P-Tech Futures and Options Settlement Price, by failing to act on or publicize complaints regarding the P-Tech Futures and Options Settlement Price, by acting on said information for their own benefit prior to acting on behalf of the persons to whom they owed a duty, and by acting in concert with Eisler in setting an incorrect P-Tech Settlement Price.

189. All of the duties owed by the foregoing entities were owed, *inter alia,* to Klein & Co.

190. Based upon the foregoing breaches of their fiduciary duties, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

191. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

192. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT V

AGAINST ALL DEFENDANTS FOR GROSS NEGLIGENCE AND BAD FAITH

193. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 192 of the complaint with the same force and effect as though more fully set forth herein.

194. Defendants owed to Klein & Co. the duties hereinabove set forth.

195. Defendants breached that duty by failing to exercise even the minimum standards of care required by persons or entities in their position with respect to monitoring, supervising, maintaining and protecting an objective and fair market and by placing Klein & Co. at risk and by taking no action to prevent or ameliorate said situation.

196. The actions of defendants constituted gross negligence in that they were effected with such a gross want of care and regard for the rights of its members and the public at large, as to justify the presumption of

willfulness and wantonness and/or in that they intentionally failed to perform manifest duties in reckless disregard of the consequences as affecting the property of others.

197. The actions of defendants were effected in bad faith in that they were effected solely for the benefit of the defendants themselves and their fellow defendants and to the detriment of Klein & Co., as evidenced, *inter alia,* by the verbal statements made against Klein & Co., by the press releases issued with respect to Klein & Co. in May, 2000, by forewarning of at least one customer of Klein & Co. causing said client to close said client's account, by the failure to take action on complaints received with respect to the P-Tech Futures and Options Settlement Price, and by the failure to take action to prevent or ameliorate the situation.

198. As a direct result of the gross negligence and bad faith of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

199. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

200. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT VI

AGAINST NYCC AND NYBOT CORPORATION FOR CONVERSION

201. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 200 of the complaint with the same force and effect as though more fully set forth herein.

202. Klein & Co., through its contractual relations with its clients, had the right to maintain custody and control over its clients' funds. At all times herein, Klein & Co. had control and dominion of said funds.

203. Klein & Co., through its contractual relations with its clients had the right to maintain custody and control over accounts receivables owed to it by its clients.

204. NYCC and NYBOT forgave or otherwise compromised said accounts receivable by, *inter alia,* adjusting the Customer Funds to credit the amounts of the accounts receivable owed by said customers to Klein & Co.

205. Klein & Co. promised, expressly and impliedly in accepting the accounts of its public customers. [sic] to safeguard and hold their individual funds for their benefit.

206. Klein & Co., had in its possession prior to May 15, 2000 approximately $14,000,000.00 in funds belonging to its clients which it was holding pursuant to its contractual relations with its clients.

207. On or about May 15, 2000, NYCC and NYBOT wrongfully confiscated said funds from Klein & Co. and placed said funds under the NYBOT's dominion and control.

208. NYCC and NYBOT have exercised dominion and control over the funds of Klein & Co.'s clients intentionally and with the full knowledge that such conduct was wrongful.

209. NYBOT only relinquished its dominion and control over the funds of Klein & Co.'s clients after a lawsuit was commenced in this Court by the New York Mercantile Exchange.

210. As a direct result of the conversion committed by the NYCC and the NYBOT, Klein & Co. has suffered damages in excess of $10,000,000.00 in an amount to be determined at trial.

211. The actions of said defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

212. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $30,000,000.00.

COUNT VII

AGAINST ALL DEFENDANTS FOR COMMON-LAW FRAUD

213. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 212 of the complaint with the same force and effect as though more fully set forth herein.

214. Defendants made representations of facts or omitted to state facts in bad faith which would have been deemed material by a person in the position of Klein & Co.

215. Such representations were false and known to be false when made.

216. The defendants who omitted to act or make any disclosure to Klein & Co. and/or the public were aware that their actions and/or disclosure would have protected Klein & Co. from any loss.

217. Defendants' actions and omissions were intentionally effected in bad faith.

218. As a direct result of the defendants' actions, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

219. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

220. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT VIII

AGAINST ALL INDUSTRY DEFENDANTS FOR DEFAMATION

221. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through

220 of the complaint with the same force and effect as though more fully set forth herein.

222. The statements hereinabove set forth by the Industry Defendants were false and known to be false when made.

223. The statements concerned Klein & Co.'s business and reputation in the industry.

224. The statements were intentionally published by the Industry Defendants and intentionally directed at the public, Klein & Co.'s peers and customers, the news media and the public.

225. The defamatory statements published by the defendants were false and known to be false when made.

226. Defendants' publication of the defamatory statements was intentionally and knowingly made.

227. As a direct result of the defamatory actions of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

228. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

229. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT IX

AGAINST ALL DEFENDANTS FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

230. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 229 of the complaint with the same force and effect as though more fully set forth herein.

231. Klein & Co. promised, expressly through its client agreements and impliedly in accepting the accounts of its public customers, to safeguard and hold their individual funds for their benefit.

232. Defendants have knowledge of the contractually and fiduciary obligations of Klein & Co. to any and all clients.

233. By intentionally and wrongfully confiscating the funds of Klein & Co.'s customers, defendants interfered with the contractual rights of Klein & Co.

234. As a direct result of the actions of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

235. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

236. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT X

AGAINST ALL DEFENDANTS FOR PRIMA FACIE TORT

237. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 236 of the complaint with the same force and effect as though more fully set forth herein.

238. The foregoing actions were committed intentionally and solely with the intent to cause economic harm to Klein & Co.

239. As a direct result of the actions of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

240. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

241. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

COUNT XI

AGAINST COTTON EXCHANGE, NYFE, NYBOT AND NYCC FOR RESPONDEAT SUPERIOR

242. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered 1 through 239 [sic] of the complaint with the same force and effect as though more fully set forth herein.

243. In the event that any or all of the individual defendants is found liable, then liability must be imposed on Cotton Exchange, NYFE, NYBOT and NYCC.

244. As a direct result of the actions of defendants, Klein & Co. has suffered damages in excess of $25,000,000.00 in an amount to be determined at trial.

245. The actions of the defendants were effected intentionally, maliciously and solely with the intent to cause damage to Klein & Co., or with such wanton disregard for the safety of the public and third-parties, as to warrant the award of punitive damages.

246. Based upon the actions of defendants, plaintiff is entitled to an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00.

247. Plaintiff demands a jury trial of all issues and counts herein.

WHEREFORE, Plaintiff demands judgment against the defendants as follows:

(a) on the first count for violation of the CEA, a judgment declaring that the NYFE shall be and hereby is suspended as a contract market; and

(b) on the second count for various statutory and/or regulatory violations, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater

amount as the trier of fact deems appropriate; and

(c) on the third count for various statutory violations relating to insider trading, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(d) on the fourth count for breach of fiduciary duty, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(e) on the fifth count for gross negligence and bad faith, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(f) on the sixth count against NYBOT and NYCC for conversion, compensatory damages in excess of $10,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $30,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(g) on the seventh count for common law fraud, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(h) on the eighth count for defamation, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(i) on the ninth count for intentional interference with contractual relations, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(j) on the tenth count for prima facie tort, compensatory damages in excess of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(k) on the eleventh count for respondeat superior, compensatory damages in excess

of $25,000,000.00 in an amount to be determined at trial, and an award of punitive damages in treble the amount of compensatory damages claims, to wit, $75,000,000.00, or in such greater amount as the trier of fact deems appropriate; and

(l) for such other, further and different relief as to this Court seems just and proper; and

(m) the costs and disbursements of this action.

Dated: New York, New York
July 20, 2000

ALONSO, FERRIGNO & ANDALKAR, P.C.

By: /s/ Mark J. Alonso
Mark J. Alonso [MJA-9582]
Attorneys for Plaintiff
275 Madison Avenue
New York, NY 10016
212-972-4400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KLEIN & CO. FUTURES, INC.,

Plaintiff,

v.

BOARD OF TRADE OF THE CITY OF NEW YORK, INC., FIRST WEST TRADING, INC., NORMAN EISLER, MARK D. FICHTEL, ALBERT WEIS, JEFF SOMAN, CHARLES SWEENEY, AL PERAS, CHRIS MEEK and "JOHN DOE" 1 through 10, NEW YORK CLEARING CORPORATION, GEORGE HAASE, LAWRENCE GULITTI, BRYAN SAYLER, HITESH TRIVEDI, and "RICHARD ROE" 1 through 10, NEW YORK COTTON EXCHANGE, INC. NEW YORK FUTURES EXCHANGE, INC. JOSEPH O'NEILL, WALTER FAIR, EVAN THOMAS, JOSEPH JACH and "PETER POE" 1 through 10,

Defendants.

00 Civ. 5563 (GBD)

NOTICE OF MOTION TO DISMISS THE COMPLAINT AS AGAINST THE NYBOT DEFENDANTS

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that, upon the annexed affidavit of Howard R. Hawkins, Jr., sworn to on October 16, 2000,

and the exhibits thereto, defendants the Board of Trade of the City of New York, Inc., New York Cotton Exchange, Inc., New York Futures Exchange, Inc., New York Clearing Corporation, Mark D. Fichtel, Albert Weis, Jeff Soman, Charles Sweeney, Al Peras, Chris Meek, George Haase, Lawrence Gulitti, Bryan Sayler, Hitesh Trivedi, Joseph O'Neill, Walter Fair, Evan Thomas, and Joseph Jach (collectively, the "NYBOT Defendants") will move this Court, before the Honorable George B. Daniels, United States District Judge, at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, on the 19th day of December, 2000, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

(a) pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing Counts I through III of the complaint as against the NYBOT Defendants for failure to state a claim upon which relief can be granted;

(b) pursuant to Federal Rule of Civil Procedure 12(b)(1) and 28 U.S.C. § 1367, dismissing Counts IV through XI of the complaint as against the NYBOT Defendants for lack of subject matter jurisdiction, or in the alternative, dismissing Counts IV through XI of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted;

(c) pursuant to Federal Rule of Civil Procedure 9(b), dismissing Counts II and VII of the complaint as against the NYBOT Defendants; and

(d) for such other and further relief, including attorneys fees and costs, as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the briefing schedule set forth in the Stipulation and Order dated September 13, 2000, all papers in opposition to this motion shall be served upon and received by the undersigned not later than December 1, 2000.

Dated: New York, New York
October 16, 2000

CADWALADER, WICKERSHAM & TAFT

By: /s/ HR Hawkins Jr.
Howard R. Hawkins, Jr.
(HH 2787)
100 Maiden Lane
New York, New York 10038
Telephone: (212) 504-6000

Attorneys for Defendants The Board of Trade of the City of New York, Inc., New York Cotton Exchange, Inc., New York Futures Exchange, Inc., New York Clearing Corporation, Mark D. Fichtel, Albert Weis, Jeff Soman, Charles Sweeney, Al Peras, Chris Meek, George Haase, Lawrence Gulitti, Bryan Sayler, Hitesh Trivedi, Joseph O'Neill, Walter Fair, Evan Thomas, Joseph Jach

TO: Mark J. Alonso, Esq.
Alonso, Ferrigno & Andalkar, P.C.
275 Madison Avenue
New York, NY 10016
Tel: (212) 972-4400

Attorneys for Plaintiff

Gary D. Stumpp, Esq.
Stumpp & Bond, LLP
45 Broadway, Suite 2106
New York, NY 10006
Tel: (212) 968-8600

Attorney for Defendants
Norman Eisler and First West Trading, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KLEIN & CO. FUTURES, INC.,

Plaintiff,

v.

BOARD OF TRADE OF THE CITY OF NEW YORK, INC., FIRST WEST TRADING, INC., NORMAN EISLER, MARK D. FICHTEL, ALBERT WEIS, JEFF SOMAN, CHARLES SWEENEY, AL PERAS, CHRIS MEEK and "JOHN DOE" 1 through 10, NEW YORK CLEARING CORPORATION, GEORGE HAASE, LAWRENCE GULITTI, BRYAN SAYLER, HITESH TRIVEDI, and "RICHARD ROE" 1 through 10, NEW YORK COTTON EXCHANGE, INC., NEW YORK FUTURES EXCHANGE, INC. JOSEPH O'NEILL, WALTER FAIR, EVAN THOMAS, JOSEPH JACH and "PETER POE" 1 through 10,

Defendants.

00 Civ. 5563 (GBD)

AFFIDAVIT OF HOWARD R. HAWKINS IN SUPPORT OF THE NYBOT DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

HOWARD R. HAWKINS, JR., being duly sworn, says:

1. I am a Member of the Bar of this Court, and of the firm of Cadwalader, Wickersham & Taft, attorneys for defendants the Board of Trade of the City of New York, Inc. ("NYBOT"), New York Cotton Exchange, New York Futures Exchange, Inc., New York Clearing Corporation, Mark D. Fichtel, Albert Weis, Jeff Soman, Charles Sweeney, Al Peras, Chris Meek, George Haase, Lawrence Gulitti, Bryan Sayler, Hitesh Trivedi, Joseph O'Neill, Walter Fair, Evan Thomas, and Joseph Jach (the "NYBOT Defendants"). I submit this affidavit in support of the NYBOT Defendants' motion to dismiss the Complaint of plaintiff Klein & Co. Futures, Inc. ("Klein & Co.") pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b).

2. Annexed hereto as Exhibit A is a true copy of plaintiffs Complaint, dated July 20, 2000.

3. In the Complaint, plaintiff alleges that NYBOT is a board of trade. Compl. ¶ 12. NYBOT, in fact, is the ultimate parent company of the New York Cotton Exchange (the "Cotton Exchange") and its subsidiaries, New York Clearing Corporation ("NYCC") and New York Futures Exchange, Inc. ("NYFE").

4. NYFE and the Cotton Exchange are self-regulatory organizations ("SROs") designated by the U.S. Commodity Futures Trading Commission ("CFTC") as contract markets for the trading of futures and options pursuant to Sections 5 and 6(a) of the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 7, 8(a). As designated contract markets, NYFE and the Cotton Exchange are required to follow specified requirements as set forth in the CEA and CFTC Rules and Regulations promulgated thereunder,

including among other things, requirements relating to minimum financial standards and reporting requirements for futures commission merchants that are exchange members (such as plaintiff Klein & Co.), as well as requirements for customer claim procedures, and member disciplinary procedures and fitness requirements.

5. Annexed as Exhibit B is a copy of NYCC By-Law 5.5, which governs monetary defaults by Clearing Members such as Klein & Co., referenced in ¶ 106 of the Complaint.

6. Annexed as Exhibit C is a copy of amended NYCC By-Law 5.4, governing Guaranty Fund deposits for Clearing Members, referenced in ¶¶ 74-76 of the Complaint.

7. In its Complaint, plaintiff Klein & Co. does not allege that it traded for its own account in the Pacific Stock Exchange Technology Index Futures Contracts and Options ("P-Tech Futures and Options"). I am informed by knowledgeable representatives of NYCC that exchange records indicate that during 2000, Klein & Co. never traded P-Tech Futures or Options for its own account.

8. Annexed as Exhibit D is a copy of the May 17, 2000 Press Release issued by NYBOT, referenced in ¶ 111 of the Complaint.

9. Annexed as Exhibit E are copies of NYFE Rule 137, NYCC By-Law 6.5, and Cotton Exchange Rule 5.09 (and as amended, Rule 6.37), each of which provide that any member (such as plaintiff Klein & Co.) that fails to prevail in any action against NYFE, NYCC, the Cotton Exchange, or any of their officers, directors or committee members, shall be liable to pay all reasonable attorneys fees and costs of the defense of such proceeding.

10. For the reasons set forth in the NYBOT Defendants' accompanying Memorandum of Law, the Complaint as against the NYBOT Defendants should be dismissed in all respects, with costs and attorneys fees.

/s/ H. R. Hawkins, Jr.
HOWARD R. HAWKINS, JR.

Sworn to before me this
16th day of October 2000.

/s/ Christine P. Jackson
Notary Public

CHRISTINE P. JACKSON
Notary Public, State of New York
No. 02JA5088035
Qualified in Kings County
Certificate Filed in New York County
Commission Expires Nov. 10, 2001

EXHIBIT B

NYCC By-Law

Section 5.5. Monetary Defaults: Use of Guaranty Fund: Assessments

If any Clearing Member fails to deposit with, or pay to, the Corporation in full any original margin, variation margin, option premium or other sum (not including any dues, assessments or fines) under or in connection with any Contract or fails to satisfy any reimbursement obligation to the Corporation in full under or in connection with any Cross Margining Program, when and as required by or pursuant to the rules of the Listing Exchange, the Rules of the Corporation or pursuant to the terms of any Cross Margin Program, such failure shall constitute a "Monetary Default." If and at such time as the Corporation

has in effect a procedure whereby deposits or payments of sums with or to the Corporation are effected by having the Corporation instruct the Clearing Members' banks to wire transfer funds from their accounts with such banks directly to the accounts of the Clearing Corporation, a Clearing Member shall be deemed to have failed to deposit or pay any sum when and as required if such Clearing Member's bank fails so to wire transfer funds when and as instructed by the Corporation. In the event that at any time a Monetary Default occurs on the part of any Clearing Member (the "Defaulting Clearing Member"), then:

(a) Such Defaulting Clearing Member's original margin on deposit with the Corporation (in both customer and proprietary accounts), its Guaranty Fund deposits and any of its other assets under the control of the Corporation shall be applied by the Corporation to pay the amount owing (the "Defaulted Obligation") as hereinafter set forth. If and to the extent a Monetary Default relates to a Contract carried in the customer account of a Defaulting Clearing Member, such margin, Guaranty Fund deposit and other assets (whether held for the proprietary account or the customer account) shall be applied to pay the Defaulted Obligation. If and to the extent a Monetary Default relates to a Contract carried in the proprietary account of a Defaulting Clearing Member, such Guaranty Fund deposit, but only that portion of such margin and such other assets as are held for the proprietary account, shall be applied to pay the Defaulted Obligation. The Defaulting Clearing Member shall immediately restore any deficiencies in its margin and Guaranty Fund deposits resulting from any such application.

(b) If the margin, Guaranty Fund deposit and other assets of a Defaulting Clearing Member under the control of the Corporation are in the aggregate less than the Defaulted Obligation, and if the Defaulting Clearing Member fails to pay the Corporation the amount of the deficiency on demand, such Defaulting Clearing Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Clearing Member, shall be met from the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose;

(ii) If the President, with the concurrence of the Chairman or the Vice Chairman, so determines, a loan on such terms and conditions as they may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty Fund or the cash, securities and other property held in the Guaranty Fund as provided in Section 5.4(f) of these By-Laws);

(iii) subject to Section 5.4(g)(ii) of these By-Laws, the Guaranty Fund;

(iv) insurance proceeds, if any, received by the Corporation in connection with the Monetary Default giving rise to the Defaulted Obligation; and

(v) assessments levied by the Corporation upon the Clearing Member (other than the Defaulting Clearing Member) as hereafter provided in this Section 5.5.

The total amount to be assessed at any one time pursuant to clause (v) of this paragraph (b) is hereinafter called the "Assessment Amount."

(c) The amount of any assessment levied on any Clearing Member shall be computed as follows:

(i) Divide the number of futures contracts, options and other contracts or instruments involving all commodities traded on or subject to the rules of any Exchange which were cleared for such Clearing Member by the Corporation and by any Former Clearing Organization for the period of six months preceding the Monetary Default by the total number of futures contracts, options and other contracts or instruments involving in such commodities cleared by the Corporation and any Former Clearing Organization during such six-month period for all Clearing Members being assessed, and multiply the resultant fraction by 20% of the Assessment amount.

(ii) Divide the total daily gross open interest in futures contracts, options and other contracts or instruments involving such commodities carried by the Corporation and any Former Clearing Organization during such six-month period for such Clearing Member by the total daily gross open interest in futures contracts, options, and other contracts or instruments carried by the Corporation and any Former Clearing Organization during such six-month period for all Clearing Members being assessed, and multiply the resultant fraction by 80% of the Assessment Amount.

(iii) For each Clearing Member, add the amounts computed pursuant to subparagraphs (i) and (ii). The total shall constitute the amount of the assessment to be levied on such Clearing Member pursuant to this paragraph (c).

(d) If the amount assessed against any Clearing Member as determined pursuant to paragraph (c) of his Section 5.5 would exceed the maximum set forth in paragraph (e) of this Section 5.5, or if the amount assessed against any Clearing Member shall exceed the amount paid by such Clearing Member, the excess shall be assessed against the other Clearing Members (other than the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum permitted by paragraph (e)) in accordance with such subparagraph (c), as if the excess were the Assessment Amount. Assessments pursuant to this paragraph (d) shall be repeated until the entire Assessment Amount shall have been assessed.

(e) If a Person shall withdraw as a Clearing Member, and if on the Withdrawal Date no assessment shall have been imposed upon such Clearing Member within the period of ten Business Days preceding the Withdrawal Date, or if on the Withdrawal Date an assessment shall have been so imposed during such period and such assessment shall have been paid in full (subject to the Assessment Cap), then the total amount that may be assessed against such Clearing Member pursuant to this Section 5.5 on and after the first day of such period shall not exceed an amount (the "Assessment Cap") which is the lesser of:

(i) 25% of such Clearing Members Capital; or

(ii) $10 million.

Amounts deposited by Clearing Members in the Guaranty Fund, including without limitation amounts deposited to restore a deficiency as provided in Section

5.4(g)(ii) do not constitute assessments imposed or paid and are not subject to the Assessment Cap.

(f) If in any case, because of the limitations contained in paragraph (e) of this Section 5.5, the maximum permitted assessments are less than the Assessment Amount, the Board shall determine what if any further action to take, provided that under no circumstances may the Board levy assessments on any Clearing Member that would exceed the limitations contained in paragraph (e) of this Section 5.5.

(g) Notwithstanding any other provision of these By-Laws, a Person which withdraws as a Clearing Member shall be subject only to assessments imposed to meet:

(i) Monetary Defaults occurring prior to the date on which such Clearing Member's withdrawal becomes effective or such Person otherwise ceases to be a Clearing Member (the "Withdrawal Date"), subject to the limitations contained in paragraph (e) of this Section 5.5;

(ii) assessments levied under Section 5.4(j) of these By-Laws prior to the effective date of such Clearing Member's withdrawal; and

(iii) the first Monetary Default occurring after the Withdrawal Date, subject to the limitations contained in paragraph (e) of this Section 5.5.

(h) All assessments shall be due and payable within such time as the Corporation may prescribe. If any Person shall not pay any assessment when due, such Person shall continue to be liable therefor, but the Corporation may assess the Clearing Members (other than such Person, the Defaulting Clearing Member and any Clearing Member

that shall have been assessed the maximum amount permitted by paragraph (e)) for the unpaid amount in accordance with paragraphs (c) and (d) of this Section 5.5.

(i) If, after making any assessments to meet any Defaulted Obligation owing by a Defaulting Clearing Member as referred to in paragraph (b), or to meet any assessment not paid as referred to in paragraph (h), the Corporation collects the amount of such Defaulted Obligation or such unpaid assessment in whole or in part from the Person or Persons liable therefor, the Corporation shall refund the amount so collected (net of any expenses, including without limitation any legal fees incurred in connection therewith) pro rata to the Clearing Members that had been assessed to meet such Defaulted Obligation or nonpayment and had paid the amount so assessed.

EXHIBIT C

NYCC By-Law

Section 5.4. Guaranty Fund

The Corporation shall establish and maintain a Guaranty Fund.

(a) Each Clearing Member (other than a Self-Clearing Clearing Member) shall deposit and maintain in the Guaranty Fund an amount calculated as follows:

(i) Divide the total original margin requirements for all futures contracts, options and other contracts or instruments traded on or subject to the rules of each of the Exchanges which were cleared for such Clearing Member by the Corporation for the period of six months ending the date as of which the calculation

is made, by the total original margin requirements for all such futures contracts, options and other contracts or other instruments which were cleared for all Clearing Members by the Corporation during such six-month period, and multiply the resultant fraction by ⅕ of the total amount then on deposit in the Guaranty Fund as of such date.

(ii) Divide the original margin requirements for the total daily gross open interest in futures contracts, options and other contracts or instruments carried by the Corporation during such six-month period for such Clearing Member by the total original margin requirements for the total daily gross open interest in all such futures contracts, options and other contracts or instruments carried by the Corporation for all Clearing Members during such six-month period, and multiply the resultant fraction by ⅘ of the total amount then on deposit in the Guaranty Fund as of such date.

(iii) For each Clearing Member, the amount to be deposited and maintained in the Guaranty Fund shall be the sum of the amounts computed pursuant to subparagraphs (i) and (ii), provided that:

(A) (except as provided in paragraph (b) of this Section 5.4), no Clearing Member shall be required to deposit or maintain in the Guaranty Fund less than the greater of an amount equal to 10% of its Capital or $300,000; and

(B) no Clearing Member shall be required to deposit or maintain in the Guaranty Fund more than the lesser of an amount equal to 20% of its Capital or $3,500,000.

(iv) The amount of each Clearing Member's required Guaranty Fund deposit shall be recalculated as of the last Business Day of each March, June, September and December.

(v) As used in the paragraph (a):

(A) The term "Capital" with respect to any Clearing Member shall mean the lesser of the amount of its actual Capital or such amount as may have been designated by it for Position Limit purposes pursuant to Section 5.6(a)(v) of these By-Laws; and

(B) In calculating original margin requirements, option liquidation values are not to be included.

(b) Each Self-Clearing Clearing Member shall deposit and maintain $30,000 in the Guaranty Fund, all of which shall be in the form of cash.

(c) Except as provided in paragraph (b) of this Section 5.4, deposits in the Guaranty Fund may be made by any Clearing Member in the form of cash or securities which are direct obligations of the United States Government, and which have such maximum time to maturity as the Corporation may prescribe; providing that each Clearing Member shall deposit a minimum of $50,000 in the form of cash. Any such securities shall be valued in accordance with such methodology as may be adopted by the Board.

(d) Guaranty Fund deposits shall be held in a bank approved for the purpose by the Corporation, in an account or accounts separate from all other cash and securities held by the Corporation. The Corporation shall have the sole right to withdraw cash or securities from, or to authorize the sale or other disposition of any securities held in, such account or accounts subject to the rights of any assignee, pledgee or holder of a security interest in the Guaranty Fund or any cash or securities therein.

(e) So long as any Person is a Clearing Member and thereafter for the period until the Corporation returns such person's Guaranty Fund deposits as provided in paragraph (i) of this Section 5.4, the Guaranty Fund deposits of such person may be applied by the Corporation:

(i) against any amounts that become due from such Person to the Corporation for any reason (including but not limited to original margin, variation margin, option premiums, dues, assessments, fines and reimbursement of any amounts paid by the Corporation to a Cross Margining Clearing Organization under any Cross Margining Program) at any time it was a Clearing Member and for a period of six months after it ceases being a Clearing Member;

(ii) against any amounts that are charged as provided in or pursuant to Section 5.5 of these By-Laws against the Guaranty Fund deposits of all Clearing Members at any time that such Person was a Clearing Member and for a period of six months thereafter; and

(iii) to provide such funds, on such terms and conditions, as the Board in its discretion, acting by a vote of not less than three-fourths of all directors eligible to vote, may deem necessary or appropriate to facilitate the transfer of customer accounts from a Clearing Member experiencing financial difficulty to another Clearing Member, if the Board shall determine by such vote that to do so is in the best interests of the Corporation.

(f) The Corporation may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Corporation (plus interest, fees and other amounts payable in connection therewith). Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Corporation (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Corporation for which such cash, securities or other property was pledged to or deposited with the Corporation. Any funds so borrowed shall be used and applied by the Corporation solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to these By-Laws and the Rules; provided that the failure of the Corporation to use such funds in accordance with this subsection shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or

security interest. Cash, securities and other property held in the Guaranty Fund, subject to the rights and powers of the Corporation with respect thereto as set forth in these By-Laws, the Rules and any agreements between any Clearing Member and the Corporation, and subject to the rights and powers of any person to which the Guaranty Fund or any cash, securities or other property held therein shall have been assigned, pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Clearing Members depositing such cash securities and other property.

(g) Subject to the rights of any assignee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Section 5.4, if at any time the amount of any cash, plus the value of any securities, on deposit in the Guaranty Fund for any Clearing Member

(i) shall exceed the amount required to be on deposit for such Clearing Member by more than such amount as the Board may prescribe, the Corporation will return the excess to such Clearing Member upon its written request.

(ii) shall be less than the amount required to be on deposit for such Clearing Member, such Clearing Member shall restore the deficiency (including, without limitation, a deficiency caused by the application of such Clearing Member's deposits in the Guaranty Fund as described in Section 5.4(e) of these By-Laws) on demand; provided, however, that a Clearing Member that has withdrawn as a Clearing Member shall not be required to restore a deficiency occurring after the

effective date of its withdrawal; and, further provided, that if and to the extent that any such deficiency is caused by the application of such Clearing Member's deposits in the Guaranty Fund to meet a Monetary Default pursuant to Section 5.5(b)(iii) of these By-Laws, any amounts deposited with the Corporation to restore such deficiency shall not be applied to further meet the same Monetary Default.

(h) Any interest earned on any securities deposited in the Guaranty Fund by a Clearing Member shall belong and be credited to such Clearing Member. The Corporation may invest any cash deposited in the Guaranty Fund in securities which are direct obligations of the United States Government and may engage in repurchase transactions with any cash or securities on deposit. Any interest, capital gain or other income earned on any such securities shall belong and be credited to the Corporation.

(i) Subject to the rights of any assignee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Section 5.4, whenever a Person ceases to be a Clearing Member, the Corporation shall return to such Person the amount of cash and securities on deposit in the Guaranty Fund for such Person; provided, however, that the Corporation shall not be required to so return such cash and securities after the effective date of the termination of such Clearing Membership until six months after the last date on which such Person either had any open positions carried by the Corporation or had any futures contracts, options or other contracts or instruments cleared by the Corporation (or such longer period as the Board may prescribe),

unless the Corporation receives guaranties or other security satisfactory to it to assure the availability of any amounts to be applied as provided in subsection (e) of this Section 5.4.

(j) If the Guaranty Fund or any part thereof is lost as a result of the insolvency of any bank or other depository, embezzlement, defalcation or any reason other than use pursuant to Section 5.5 of these By-Laws, such loss may, in the discretion of the Board, be restored by application of the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose; and

(ii) assessments levied by the Corporation upon the Clearing Members, which assessments shall be paid to the Corporation at such time and in such manner as the Board may specify. The amount of a Clearing Member's assessment shall be the amount derived by multiplying the loss by a fraction, the numerator of which shall be the amount of such Clearing Member's required deposit in the Guaranty Fund on the day preceding the loss and the denominator of which shall be the total amount required to be in the Guaranty Fund on such day.

(k) In the event that the Corporation accepts a transfer of cash or securities from a guaranty fund of any other clearing organization of which a Clearing Member is or was a member to satisfy in whole or in part the obligations of such

Clearing Member to deposit and maintain funds in the Guaranty Fund, the Corporation shall (to the extent of the amount of the cash and the value of the securities so transferred) guaranty payment by such Clearing Member to such clearing organization of any amount, the payment of which would have been secured by such Clearing Member's deposit in the guaranty fund of such other clearing organization. If the Corporation is required to make any payment pursuant to such guaranty as to any Clearing Member, the Corporation may withdraw the amount thereof out of the Guaranty Fund, and such Clearing Member will restore the amount so withdrawn on demand.

(l) In the event that the Guaranty Fund or any part thereof shall have been applied as described in paragraph (e) of this Section 5.4 or shall have been lost as described in paragraph (j) of this Section 5.4, and the Corporation shall thereafter recover any amount so applied or lost from any Person liable therefor, the amount of such recovery (after deducting any expenses (including without limitation legal fees and expenses incurred in connection therewith) shall be credited to the Guaranty Fund deposits of each Clearing Member in that proportion which the amount required to be on deposit by such Clearing Member bears to the amount required to be on deposit by all Clearing Members as of the date upon which such application took place or such loss was incurred.

(m) Any expense (including without limitation legal fees and expenses) incurred by the Corporation in connection with the deposit by a Clearing Member of assets into the Guaranty Fund, or the return thereof to such Clearing Member, may at

the option of the Corporation be charged to such Clearing Member.

EXHIBIT D

NEWS RELEASE

[LOGO]
Four World Trade Center,
New York, NY 10048
Tel: 212 742 6000 Fax: 212 748 4320

FOR IMMEDIATE RELEASE

Contact:
Terence Gordon
(212) 742-6106

NYBOT BOARD APPROVES RESOLUTION REGARDING CLEARING MEMBER SUSPENSION

– NYBOT President Responds to NYMEX Lawsuit Against Exchange –

(New York, NY May 17, 2000) – At a special meeting this afternoon, the Board of Directors of the New York Board of Trade (NYBOT) approved a plan designed to "make whole" traders and all other customers who sustained losses as a result of Klein & Co. Futures, Inc.'s suspension of membership in the exchanges and the New York Clearing Corporation (NYCC).

Specifically, NYBOT will pay the innocent customers of Klein whose funds were utilized by Klein to meet its obligations to the Clearing Corporation.

"I am pleased at the speed and sense of fairness with which the NYBOT Board has moved in addressing this serious issue," stated Mark D. Fichtel, NYBOT President and CEO. "The board obviously has taken into account the concerns and best interests of our members, and the

members of other exchanges, who cleared through Klein & Co. Futures, Inc. by deciding to 'make whole' the losses they incurred this week."

"I am especially surprised and disappointed that NYBOT has been served with a lawsuit by NYMEX on behalf of its members who cleared through Klein," stated Mr. Fichtel. "Through conversations with their senior management today, they were made aware of the valiant efforts of our Board to do the right thing. They are falsely looking like a wronged party through this outright grandstanding, ignoring their own history with the Volume Investors Corp. debacle."

"In fact," added Mr. Fichtel, "as a Designated Self Regulatory Organization, (DSRO) NYMEX was in a position to monitor Klein's activities. In that regard, they failed to pick up on Klein's treatment of customer funds that led to the serious incidents earlier this week."

More recently, in 1999, NYMEX's COMEX members were adversely affected by huge out-trades from heavy volume trading in gold options that did not clear for several days. "Where was NYMEX's oversight when that was happening?" questioned Mr. Fichtel.

The New York Board of Trade (NYBOT) is the parent company of the Coffee, Sugar & Cocoa Exchange, Inc. (CSCE) and the New York Cotton Exchange (NYCE). Through its two exchanges and subsidiaries and division, which include Citrus Associates, FINEX and the New York Futures Exchange (NYFE), NYBOT offers a variety of agricultural, financial and index products. The Cantor Exchange (CX), a joint venture with eSpeed, Inc, provides the first full-time electronic market for U.S. Treasury and Agency futures.

NYBOT can be found on the web at www.nybot.com.

\# \# \#

New York Board of Trade is the parent company of the Coffee, Sugar & Cocoa Exchange, New York Cotton Exchange, Citrus Associates, FINEX, NYFE and the Cantor Exchange

---

EXHIBIT E

New York Futures Exchange Guide Rule 137

[¶ 2285] Expenses of Lawsuits Brought Against the Exchange by Members

Rule 137 Any Member who institutes a lawsuit or other similar proceeding against the Exchange, or any of its officers, Board of Managers or committee members, agents or employees in any court of law or otherwise and who fails to prevail in such lawsuit or proceeding shall pay to the Exchange any and all reasonable expenses and disbursements, including attorney's fees and any statutory costs, incurred by the Exchange in the defense of such lawsuit or proceeding.

NYCC BY-LAW

Section 6.5. Exculpation and Reimbursement of Corporation

(a) NEITHER THE CORPORATION, NYBT NOR ANY EXCHANGE, NOR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE CORPORATION, NYBT OR ANY EXCHANGE, SHALL BE LIABLE TO ANY CLEARING MEMBER FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION

WITH ANY ERROR, ACT OR OMISSION ON THE PART OF THE CORPORATION, OR ON THE PART OF ANY PERSON IN THE CAPACITY OF MEMBER OR IN THE CAPACITY OF DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF A MEMBER OR OF THE CORPORATION, WHETHER OR NOT SUCH DAMAGES ARE DUE TO NEGLIGENCE, UNLESS SUCH ERROR, ACT OR OMISSION WAS THE RESULT OF WILLFUL OR WANTON CONDUCT OR WAS IN BAD FAITH.

(b) Any Clearing Member which institutes an action or proceeding against the Corporation, or any of the officers, directors, committee members, agents or employees of the Corporation, and which fails to prevail in such action or proceeding, shall reimburse the Corporation and such officer, director, committee member, agent or employee, for any and all costs or expenses (including but not limited to attorneys' fees, expenses of investigation and amounts paid by way of indemnifying any officers, directors, employees or other persons by the Corporation) incurred in connection with the defense of such action or proceeding.

New York Cotton Exchange
Rule 5.09 effective until 7/24/00

RULE 5.09 EXCHANGE DEFENSE EXPENSES AND PROSECUTION EXPENSES

(a) *Exchange Defense Expenses* –

Any member who fails to prevail in a lawsuit or similar proceeding instituted by that member against the Exchange or any of its officers, directors, committee members, agents or employees

must pay to the Exchange all reasonable expenses, including attorney's fees, incurred by the Exchange in the defense of such proceeding.

(b) *Exchange Prosecution Expenses* –

Any member who, after notice and opportunity for hearing, has been found to have violated any By-Law or Rule of the Exchange, may, in the discretion of the Supervisory Panel appointed in the matter, be required to pay to the Exchange an amount equal to any and all expenses incurred by the Exchange in connection with the prosecution of such violation, in addition to any penalty which may be imposed upon such member by virtue of the violations found by the Hearing Panel.

New York Cotton Exchange
By-Law 6.37 effective date 7/24/00

Rule 6.37 Expenses of Lawsuits Brought Against the Exchange by Members

Any member who institutes a lawsuit or other similar proceeding against the Exchange, or any of its officers, Board of Managers or committee members, agents or employees in any court of law or otherwise and who fails to prevail in such lawsuit or proceeding shall pay to the Exchange any and all reasonable expenses and disbursements, including attorney's fees and any statutory costs, incurred by the Exchange in the defense of such lawsuit or proceeding.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case # 00 Civ. 5563 (GBD)

[Caption Omitted In Printing]

[Exhibit E to Affidavit in Opposition of
Mark R. Alonso, dated November 30, 2000]

* * *

New York Clearing Corporation
By-Laws & Rules

. . . the by-laws & rules of the New York Clearing Corporation . . .

TABLE OF CONTENTS

Section	Subject	
	ARTICLE I Definitions; Offices; Time References	
1.1.	*Definitions*	11,011
	ARTICLE II Shareholders	
2.1.	*Share Certificates*	11,011
2.2.	*Place of Meetings*	11,013
2.3.	*Annual Meetings*	11,015
2.4.	*Special Meetings*	11,017
2.5.	*Notices*	11,019
2.6.	*Quorum*	11,021
2.7.	*Voting*	11,023
2.8.	*Proxies*	11,025
2.9.	*Written Consents*	11,027

ARTICLE III
Directors

3.1.	*Duties and Powers*	11,031
3.2.	*Number of Directors*	11,033
3.3.	*Qualifications of Directors*	11,035
3.4.	*Election, Appointment and Term of Office*	11,037
3.5.	*Meeting*	11,039
3.6.	*Quorum*	11,041
3.7.	*Action by the Board*	11,043
3.8.	*Notices*	11,045
3.9.	*Vacancies*	11,047
3.10.	*Removal*	11,049
3.11.	*Resignation*	11,051
3.12.	*Committees*	11,053
3.13.	*Written Consent in Lieu of Meeting*	11,055
3.14.	*Conference Calls*	11,057

ARTICLE IV
Officers

4.1.	*Titles*	11,059
4.2.	*Qualifications*	11,061
4.3.	*Compensation*	11,063
4.4.	*Appointment and Term of Office*	11,065
4.5.	*Chairman*	11,067
4.6.	*Vice Chairman*	11,069
4.7.	*President*	11,071

4.8.	*Vice President*	11,073
4.9.	*Secretary*	11,075
4.10.	*Treasurer*	11,077
4.11.	*Resignation*	11,079
4.12.	*Removal*	11,081
4.13.	*Vacancies*	11,083

ARTICLE V

Clearing Members

5.1.	*Status of Clearing Members*	11,085
5.2.	*Eligibility Requirements*	11,087
5.3.	*Procedure for Becoming a Clearing Member*	11,089
5.4.	*Guaranty Fund*	11,091
5.5.	*Monetary Defaults; Use of Guaranty Fund; Assessments*	11,093
5.6.	*Position Limits*	11,095
5.7.	*Original Margin*	11,097

ARTICLE VI

Indemnification; Liability

6.1.	*Indemnification by Corporation*	11,101
6.2.	*Indemnification by Resolution or Agreement*	11,103
6.3.	*Enforcement*	11,105
6.4.	*Indemnification By Clearing Members*	11,107

6.5. *Exculpation and Reimbursement of Corporation* 11,109

6.6. *General* 11,111

ARTICLE VII
Emergency Powers

7.1. *Exchange-Determined Emergency* 11,113

7.2. *Corporation-Determined Emergency* 11,115

7.3. *Inconsistent Determinations* 11,117

7.4. *Physical Emergency* 11,119

7.5. *Definitions* 11,121

ARTICLE VIII
Miscellaneous

8.1. *Fiscal Year* 11,123

8.2. *Seal* 11,125

8.3. *Obligations* 11,127

8.4. *Amendment and Repeal* 11,129

RULES
Part 1
General Provisions

101. *Definitions* 11,151

102. *Extension or Waiver of Rules* 11,153

103. *Action by the Corporation* 11,155

104. *Headings* 11,157

105. *Confidential Treatment of Information Submitted by Clearing Member* 11,159

106.	*Employee Disclosures*	11,161
107.	*Trading Prohibition*	11,163
108.	*Improper Use or Disclosure of Material, Non-Public Information by Board Member or Committee Member*	11,165
109.	*Consent to Disclosure of Certain Information*	11,167
110.	*Notices to Clearing Members*	11,169

Part 2
Clearing Membership

201.	*Obligations of Clearing Members*	11,171
202.	*Reports to Clearing Members*	11,173
203.	*Effectiveness of Termination of Authority*	11,175
204.	*Receipt of Documents*	11,177
205.	*Documents Submitted to the Corporation*	11,179
206.	*Records and Information*	11,181
207.	*False Information*	11,183
208.	*Obligations of Suspended Clearing Member*	11,185
209.	*Termination of Clearing Membership*	11,187
210.	*Class B Clearing Members*	11,189

Part 3
Financial Requirements

301.	*Reporting*	11,191
302.	*Requirements for Subordinated Loan Agreements*	11,193

Part 4
Clearing Mechanism

401.	*Acceptance for Clearance*	11,195
402.	*Trade Data Submission*	11,197
403.	*Daily Reporting of Open Contracts*	11,199
404.	*Reporting of Exchange Positions Carried by Other Firms*	11,201
405.	*Transfers of Open Positions*	11,203

Part 5
Margins and Premiums

501.	*Approved Financial Institutions*	11,205
502.	*Margin and Premium Requirement*	11,207
503.	*Cash Margin Deposits*	11,209
504.	*Mechanics for Margins and Premium Payments*	11,211
505.	*Deposit of Securities, Approved Foreign Currencies, and Letters of Credit as Original Margin*	11,213
506.	*Chane in Status of Approved Financial Institution*	11,215
507.	*Bank Holidays*	11,217

Part 6
Deliveries

601.	*Delivery Rules*	11,219
602.	*Original Margin on Delivery Notices*	11,221
603.	*Deliveries in Bankruptcy Situations*	11,223

Part 7
Option Exercise

701.	*Exercise Rules*	11,225
702.	*Exercise of Options*	11,227

Part 8
Defaults

801.	*Defaults*	11,229
802.	*Liquidation on Termination or Suspension of Clearing Member*	11,231
803.	*Method of Closing Out*	11,233
804.	*Amounts Payable to the Corporation*	11,235
805.	*Reinstatement of Suspended Member*	11,237

Part 9
Disciplinary Proceedings

901.	*Rule Violations*	11,239
902.	*Summary Imposition of Fines; Request for Review*	11,241
903.	*Review of Summary Fine by Board*	11,243
904.	*Hearings in Financial Emergencies*	11,245
905.	*Reinstatement of Suspended Member; Revocation or Modification of Other Actions*	11,247
906.	*Conflicts of Interest*	11,249
907.	*Liability for Expenses*	11,251

BY-LAWS OF COMMODITY CLEARING CORPORATION (A New York Corporation)

ARTICLE I

Definitions; Offices; Time References

¶ 11,001

Section 1.1. ***Definitions***

Unless the context otherwise clearly requires, the following terms as used in the By-Laws and Rules shall have the following meanings:

Affiliated Person

With respect to any Entity, any Person who Controls, is Controlled by or is under common Control with such Entity, and, without limiting the generality of the foregoing, any partner, trustee, officer, director or employee (whether or not having Control) of such Entity; with respect to any individual, any Person of which such individual is a partner, member, trustee, officer, director or employee or has Control, and any Person who Controls, is Controlled by or is under common Control with such Person.

Assessment Amount

The meaning set forth in Section 5.5(b).

BCL

The Business Corporation Law of the State of New York, as in effect from time to time.

Board

Board of Directors of the Corporation.

Business Day

A day on which the Corporation is open to accept Contracts for clearance.

By-Laws

The By-Laws of the Corporation, as in effect from time to time.

Capital

Adjusted Net Capital computed in accordance with Commission Regulation 1.17, except that unsecured receivables from any bank organized under the laws of the United States or of any state shall be included as current assets, so long as such receivables are outstanding no longer than 30 days from the date they are accrued. For purposes of Sections 5.4(a) and 5.5 of these By-Laws, the Capital of any Clearing Member shall be computed as of the date of either (a) the most recent financial reports provided by such Clearing Member to the Corporation in accordance with these By-Laws and the Rules, or (b) such Clearing Member's latest audited financial statements, whichever will result in higher Capital for such Clearing Member.

CCC

The Corporation.

Certificate of Incorporation

The Certificate of Incorporation of the Corporation, as in effect from time to time.

CFCCNY

Commodity Futures Clearing Corporation of New York, a corporation organized and existing under the NPCL, its successor and any permitted assign.

CFFE

Cantor Financial Futures Exchange, Inc. a corporation organized and existing under the NPCL, its successor and any permitted assign.

CFFE Clearing Member

A Clearing Member which only has the privilege to clear Contracts effected on or subject to the rules of CFFE.

Chairman

The Chairman of the Board.

Citrus

Citrus Associates of the New York Cotton Exchange, Inc., a corporation existing under the NPCL, its successor and any permitted assign.

Class B Clearing Member

A Clearing Member which has the privilege to clear Contracts in financial instruments but only as part of arbitrage transactions for its proprietary account with an Arbitrage Bank.

Clearing Member

A Person who or which pursuant to these By-Laws has the privilege to clear with the Corporation Contracts effected on or subject to the rules of an Exchange.

Commission

Commodity Futures Trading Commission and any successor agency.

Commission Regulation

Any rule or regulation adopted by the Commission, and any interpretation thereof or order thereunder issued by the Commission or the staff thereof.

Contract

A futures contract, option or other contract or instrument for which the Corporation acts as a clearing organization.

Control

The power to direct or cause the direction of the management or policies of a Person, whether through ownership of securities, by contract or otherwise.

Corporation

Commodity Clearing Corporation, a corporation existing under the BCL, its successor and any permitted assign.

Cross Margining Clearing Organization

A clearing organization that has entered into a cross-margining agreement with the Corporation.

Cross Margining Program

Any program established under a cross margining agreement between the Corporation and one or more Cross Margining Clearing Organizations pursuant to which Clearing Members receive Cross Margining treatment.

CSCE

Coffee, Sugar & Cocoa Exchange, Inc., a corporation existing under the NPCL, its successor and any permitted assign.

Defaulted Obligation

The meaning set forth in Section 5.5(a).

Defaulting Clearing Member

The meaning set forth in Section 5.5.

Effective Date

The date upon which these By-Laws become effective.

Emergency

The meaning set forth in Section 7.5(a)

Entity

Any Person other than an individual.

Exchange

CSCE, NYCE, Citrus, NYFE, CFFE, any other board of trade, exchange or market for which the Corporation acts as a clearing organization, and their respective successors, by merger or otherwise.

Former Clearing Organization

With respect to any Exchange, any clearing organization (including the Corporation) which cleared transactions on or subject to the rules of such Exchange within six months prior to the Operational Date.

Guaranty Fund

The guaranty fund established as provided in Section 5.4.

Listing Exchange

With respect to any Contract, the Exchange on or subject to the rules of which such Contract is traded.

Monetary Default

The meaning set forth in Section 5.5.

NYBT

Board of Trade of the City of New York, Inc., a corporation organized and existing under the NPCL, its successor and any permitted assign.

NYCE

New York Cotton Exchange, a corporation existing under the NPCL, its successor and any permitted assign.

NYFE

New York Futures Exchange, Inc., a corporation organized and existing under the BCL, its successor and any permitted assign.

NPCL

The Not-for-Profit Corporation Law of the State of New York, as in effect from time to time.

Operational Date

The first day on which the Corporation clears Contracts traded on or subject to the rules of CSCE.

Person

An individual, sole proprietorship, partnership, limited liability company, association, firm, trust, corporation or other entity, as the context may require.

Physical Emergency

The meaning set forth in Section 7.5(b).

Position Limit

The limit established by the Board pursuant to Section 5.6(a) on the total Net Interest and/or the total Offset Interest that any Clearing Member may have open with the Corporation at any one time.

President

The president of the Corporation.

Rules

The Rules of the Corporation adopted by the Board as authorized by these By-Laws, the interpretations, resolutions, orders and directives of the Board thereunder and the procedures adopted by the Corporation as in effect from time to time.

Self-Clearing Clearing Member

A Clearing Member entitled under these By-Laws to clear with the Corporation Contracts effected on or subject to the rules of one or more Exchanges, but only for such Clearing Member's own account.

Self-Regulatory Organization

The Corporation and any self-regulatory organization as that term is defined in Commission Regulation 1.3(ee).

Shareholder

A holder of record of one or more shares in the Corporation.

Vice Chairman

Any Vice Chairman of the Board.

Vice President

Any Vice President of the Corporation.

Amended by the Board April and May 1999; effective January 2000.

¶ 11,011

Section 1.2. *Principal and Other Offices*

The principal office of the Corporation shall be located in the City, County and State of New York. The Corporation may have offices at such other places within or without the State of New York or within or without the United States as the Board from time to time may designate or the business of the Corporation may require.

¶ 11,013

Section 1.3. *Date and Time References*

All references to dates, times or time periods in the By-Laws and Rules shall refer to, or be measured in accordance with, New York City time.

ARTICLE II

Shareholders

¶ 11,015

Section 2.1. ***Share Certificate***

Shares in the Corporation shall be represented by share certificates in such form as the Board may approve.

¶ 11,017

Section 2.2. ***Place of Meetings***

Special and annual meetings of any class of Shareholders shall be held at the principal [sic] office of the Corporation or at such other place within or without the State of New York as may be fixed by the Board and set forth in the notice of the meeting.

¶ 11,019

Section 2.3. ***Annual Meetings***

The annual meeting of each class of Shareholders shall be held for the transaction of such business as may properly come before it at 3:30 p.m. on the third Thursday of June in each year if not a legal holiday and, if a legal holiday, on the next following Business Day not a legal holiday.

¶ 11,021

Section 2.4. ***Special Meetings***

Special meetings of Shareholders may be called at any time by the Chairman, the President, or a majority of the members of the Board present at a meeting thereof

(provided a quorum is present). Special meetings shall be called by the Secretary on receipt of a written demand therefor, setting forth the matter or matters to be considered at such meeting, duly executed by the holders of not less than 10% of the votes of shares entitled to vote at the meeting being called.

¶ 11,023

Section 2.5. *Notices*

Whenever under the provisions of this chapter Shareholders are required or permitted to take any action at a meeting, written notice shall be given stating the place, date and hour of the meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. If, at any meeting, action is proposed to be taken which would, if taken, entitle Shareholders fulfilling the requirements of section 623 of the BCL to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect and shall be accompanied by a copy of section 623 of the BCL or an outline of its material terms. A copy of the notice of any meeting shall be given, personally or by first class mail, not fewer than ten nor more than sixty days before the date of the meeting, provided, however, that a copy of such notice may be given by third class mail not fewer than twenty-four nor more than sixty days before the date of the meeting, to each Shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the Shareholder at his address as it appears on

the record of Shareholders, or, if he shall have filed with the secretary of the Corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the Corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

¶ 11,025

Section 2.6. *Quorum*

(a) Except as may be otherwise provided in the Certificate of Incorporation or in these By-Laws or by law, the holders of one-third of the votes of shares entitled to vote thereat shall constitute a quorum at any meeting of Shareholders for the transaction of business.

(b) Shareholders present in person or by proxy at any meeting may adjourn the meeting despite the absence of a quorum. When a meeting is adjourned to another time or place, it shall not be necessary to give a notice of the adjourned meeting to any of the Shareholders who were present at the meeting in person or by proxy if the time and place to which the meeting is adjourned is announced at the meeting, but in any event notice shall be given to any Shareholder who was not so present not less than one Business Day prior to the date of the adjourned meeting. At the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting.

¶ 11,027

Section 2.7. *Voting*

At every meeting of Shareholders, each Shareholder entitled to vote may vote in person or by proxy. Except as provided in the Certificate of Incorporation and these By-Laws, or as required by law, all corporate action to be taken by vote of the Shareholders or of any class of Shareholders shall be authorized by a majority of the votes cast at a meeting of Shareholders by the Shareholders entitled to vote thereon.

¶ 11,031

Section 2.8. *Proxies*

Every Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize any person or persons to act for the Shareholder by proxy. Every proxy must be signed by the Shareholder or the Shareholder's attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Shareholder executing the proxy except as otherwise provided by law.

¶ 11,033

Section 2.9. *Written Consents*

Whenever Shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon.

ARTICLE III

Directors

¶ 11,031

Section 3.1. ***Duties and Powers***

The Board shall have control and management of the affairs and business of the Corporation and shall have all the powers and duties set forth in the BCL. Without limiting the generality of the foregoing, the Board shall have the power to:

(a) adopt, amend and repeal such Rules, not contrary to the provisions of the Certificate of Incorporation, these By-Laws or applicable law, with respect to the conduct of the business of the Corporation as will, in its judgment, best promote and safeguard the interests of the Corporation; and

(b) render interpretations of the By-Laws and the Rules, which shall be binding on all persons having dealings with the Corporation directly or through Clearing Members.

The fact that certain powers of the Board are specified in these By-Laws does not in any way limit the powers of the Board, whether or not specified in these By-Laws, except as may otherwise be expressly provided in the Certificate of Incorporation, the By-Laws or applicable law.

¶ 11,033

Section 3.2. ***Number of Directors***

The number of directors shall be 11.

¶ 11,035

Section 3.3. *Qualifications of Directors*

(a) Each director shall be at least eighteen (18) years of age and shall not be ineligible to serve pursuant to paragraph (c) of this Section 3.3.

(b) For purposes of paragraph (c) of this Section 3.3, the following definitions shall apply:

(i) "Disciplinary Committee" means any committee of the Board or the Corporation empowered to bring disciplinary proceedings against a Clearing Member, to impose sanctions on a Clearing Member or to hear appeals thereof.

(ii) "Disciplinary Offense" means:

(A) any violation of the rules of a Self-Regulatory Organization except those rules relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than $5,000 in any calendar year;

(B) any rule violation described in subparagraph (b)(ii)(A) of this Section 3.3 which involves fraud, deceit or conversion or results in a suspension from membership in, or in expulsion from, a Self-Regulatory Organization;

(C) any violation of the Commodity Exchange Act or a Commission Regulation promulgated thereunder; or

(D) any failure to exercise supervisory responsibility with respect to acts described in subparagraphs (b)(ii)(A) through (C) of this Section 3.3, when such failure is itself a violation of either the rules of a Self-Regulatory

Organization, the Commodity Exchange Act, or a Commission Regulation promulgated thereunder.

(iii) "Final Decision" means:

(A) a decision of a Self-Regulatory Organization which cannot be further appealed within the Self-Regulatory Organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or

(B) any decision by an administrative law judge, a court of competent jurisdiction or the Commission, which has not been stayed or reversed.

(iv) "Settlement Agreement" means any agreement whereby a person consents to the imposition of sanctions approved by the Board or a Disciplinary Committee or by another Self-Regulatory Organization, a court of competent jurisdiction or the Commission.

(c) No individual shall be eligible to serve on the Board or a Disciplinary Committee of the Corporation if such individual:

(i) was found within the prior three years by a Final Decision in any action or proceeding brought by the Commission, any other governmental agency or any Self-Regulatory Organization to have committed a Disciplinary Offense;

(ii) entered into a Settlement Agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a Disciplinary Offense;

(iii) currently is suspended from trading on any contract market, is suspended or expelled from membership in any Self-Regulatory Organization, is serving any sentence or probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a Final Decision in any action or proceeding brought by the Commission, any other governmental agency or any Self-Regulatory Organization that such person committed a Disciplinary Offense; or

(B) a Settlement Agreement in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a Disciplinary Offense;

(iv) currently is subject to an agreement with the Commission or any Self-Regulatory Organization not to apply for registration with the Commission or membership in any Self-Regulatory Organization;

(v) currently is subject to, or has had imposed on such person, within the prior three years, a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the Commodity Exchange Act; or

(vi) currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any "self-regulatory organization" as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934.

(d) Any individual who is a member of the Board or a Disciplinary Committee shall immediately notify the

President of any Final Decision which subjects such person to disqualification pursuant to Section 3.3(c).

¶ 11,037

Section 3.4. ***Election, Appointment and Term of Office***

(a) The initial Board shall consist of four directors appointed by CCC (who shall be Affiliated Persons of clearing members of CCC), four directors appointed by CFCCNY (who shall be Affiliated Persons of clearing members of CFCCNY), one director jointly appointed by CCC and CFCCNY (who shall be an Affiliated Person of a clearing member of both CCC and CFCCNY) and two directors appointed by NYBT. Two of the directors so appointed by CCC, two of the directors so appointed by CFCCNY and two of the directors appointed by NYBT shall have a term of office expiring at the first annual meeting of shareholders which takes place not less than one year after the Operational Date, and until their respective successors have been elected or appointed and have taken office. Two of the directors so appointed by CCC, two of the directors so appointed by CFCCNY, the director jointly appointed by CCC and CFCCNY and one of the directors appointed by NYBT shall have a term of office expiring at the first annual meeting of shareholders following the annual meeting referred to in the preceding sentence.

(b) At each annual meeting of Shareholders which takes place not less than one year after the Operational Date the Shareholders shall elect directors to succeed those whose terms of office expire at such meeting. Not less than 90 days prior to each such annual meeting, the board shall appoint a Nominating Committee consisting of

five Associated Persons of Clearing Members, none of whom shall be members of the Board. Not less than 80 days prior to such annual meeting, the Nominating Committee shall nominate one or more candidates to be recommended by the Clearing Members to succeed each of the directors whose terms will expire at such annual meeting (other than the director appointed by NYBT or any successor to such director) and shall report the names of such candidates to the President. At least one of such candidates shall be in the category of an Affiliated Person of a Clearing Member having Capital of $25,000,000 or less, and at least one of such candidates shall be in the category of an Associated Person of a Clearing Member having Capital of $100,000,000 or more. The President shall forthwith notify the Clearing Members of the names of the candidates so nominated. Any five Clearing Members may nominate any other candidates by filing a petition with the President not later than 70 days prior to such annual meeting. The list of all candidates nominated as hereinbefore provided shall be sent to the Clearing Members, and a meeting shall be held at which Clearing Members may vote for candidates to be recommended to succeed each of the directors whose terms are expiring at such annual meeting (other than the director appointed by NYBT or any successor to such director). The results of such voting shall be reported to the Shareholders, but shall be advisory only. At the annual meeting, the Shareholders shall elect directors who may but need not include any or all of the individuals so recommended by the Clearing Members; provided that all but one of the directors so elected must be Affiliated Persons of Clearing Members, at least one of whom shall be in the category of an Affiliated Person of a Clearing Member having Capital of $10,000,000 or less, and at least one of whom shall be in

the category of an Associated Person of a Clearing Member having Capital of $100,000,000 or more.

(c) The directors elected at each annual meeting shall hold office for a term of two years and until their respective successors have been elected and have taken office.

¶ 11,039

Section 3.5. *Meetings*

(a) The annual meeting of the board shall be held on such day and at such time as the Board may fix, for the purpose of electing officers and transacting such other business as may properly come before the meeting.

(b) Regular meetings of the Board may be held at such time and place as may be fixed by the Board.

(c) Special meetings of the Board may be called at any time by the Chairman or the President and shall be called by the President whenever requested to do so by any two directors. Special meetings shall be held at such time and place within New York City as may be specified by the Chairman.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting of directors to another time and place.

¶ 11,041

Section 3.6. *Quorum*

A majority of the members of the Board shall constitute a quorum for the transaction of business or of

any specified item of business, except that four members of the Board shall constitute a quorum for the taking of emergency action pursuant to ARTICLE VII of these By-Laws.

¶ 11,043

Section 3.7. *Action by the Board*

Except as otherwise provided by law or these By-Laws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

¶ 11,045

Section. 3.8. *Notices*

All meetings of the Board shall be held on notice to the directors. Special meetings of the board shall be held upon not less than one hour's notice stating the purpose, place, date and hour of the meeting and specifying the person or persons at whose direction the meeting is called. At any special meeting of the Board, only the matter stated in the notice of the meeting may be acted upon at such meeting, unless an action on any other matter is consented to by all of the members of the Board. A notice pursuant to this Section 3.8 may be given orally or in writing, by personal delivery, by telephone, by telefacsimile or by electronic mail.

¶ 11,047

Section 3.9. *Vacancies*

In case of any vacancy created by death, resignation, removal or disqualification of any director, such vacancy

may be filled by election of a successor by the Shareholders. Such successor shall be elected by a plurality of the votes cast at a meeting of the Shareholders entitled to vote on such successor. If such director was in one of the categories specified in Section 3.4(b), the successor must be in the same category. A person elected or appointed to fill a vacancy as a director shall hold office for the balance of the term of the director whose position such successor is filling.

¶ 11,049

Section 3.10. *Removal*

(a) Any director may be removed with or without cause at any time by the Shareholders.

(b) A director who becomes ineligible to serve on the Board pursuant to Section 3.3(c) shall be automatically removed upon the occurrence of such ineligibility without any act of the Shareholders or the Board.

¶ 11,051

Section 3.11. *Resignation*

Any director may resign at any time. A resignation shall be written and shall take effect at the time specified therein. If no time is so specified, a resignation shall take effect at the time of its receipt by the Corporation. The acceptance of a resignation shall not be necessary to make it effective. No resignation shall discharge any accrued obligation or duty of a director.

¶ 11,053

Section 3.12. *Committees*

(a) The Board may designate from among its members an executive committee and any other committees, each consisting of three or more directors. To the extent permitted by law and as provided in the resolution adopted by the Board, each such committee may have all the authority of the Board.

(b) Each committee member shall serve at the direction and at the pleasure of the Board.

(c) Notwithstanding paragraph (a) above, the Board shall appoint an Agricultural Contracts Margin Committee and a Financial Contracts Margin Committee, each of which may be comprised of members of the Board and individuals who are not members of the Board. Each such committee shall have such powers as are specified from time to time in these By-Laws and/or the Rules.

Amended by the Board December 8, 1988; effective January 29, 1999[(c)].

¶ 11,055

Section 3.13. *Written Consent in Lieu of Meeting*

Any action required or permitted to be taken by the Board or any committee may be taken without a meeting if all the members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. Such consent may be given by telefacsimile showing the signature of the person or persons giving consent.

¶ 11,057

Section 3.14. *Conference Calls*

Any one or more members of the Board or a committee may participate in a meeting of the Board or such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV

Officers

¶ 11,059

Section 4.1. *Titles*

The officers of the Corporation shall be a Chairman, one or more Vice Chairmen, a President, one or more Vice-Presidents, a Secretary and a Treasurer. Each officer shall be appointed by the Board. The Board also may appoint such other officers as it may from time to time deem appropriate, who shall have such authority and perform such duties as may be prescribed by the Board.

¶ 11,061

Section 4.2. *Qualifications*

The Chairman and each Vice Chairman must be a director of the Corporation. Each officer other than the Chairman and any Vice Chairman must be a full time employee of the Corporation. Any two or more offices may be held by the same person.

¶ 11,063

Section 4.3. *Compensation*

The Board shall establish the compensation of all officers. The board may establish the compensation of other employees and agents or may delegate such authority to one or more officers.

¶ 11,065

Section 4.4. *Appointment and Term of Office*

Except as otherwise provided by law or by these By-Laws, each officer shall be appointed by the Board to hold office until the first meeting of the Board following the next annual meeting of Shareholders and until the successor of such officer is appointed and qualified.

¶ 11,067

Section 4.5. *Chairman*

The Chairman shall preside at all meetings of Shareholders and of the Board and shall have such powers and shall perform such other duties as are set forth in these By-Laws or as may be specified by the Board. The Chairman also shall be a member *ex officio* of all committees of directors.

¶ 11,069

Section 4.6. *Vice Chairman*

The Vice Chairman, in the absence or disability of the Chairman, shall have the powers and shall perform the duties of the Chairman. If there is more than one Vice

Chairman, the Board shall specify the order in which they shall so act. The Vice Chairman also shall have such powers and shall perform such duties as are set forth in these By-Laws or as may be specified by the Board.

¶ 11,071

Section 4.7. *President*

The President shall supervise the business and affairs of the Corporation, subject to the direction of the Board. The President shall not be a member of the Board or a Shareholder. The President shall perform all duties customarily incident to the office of president.

¶ 11,073

Section 4.8. *Vice President*

Except as may otherwise be prescribed by the Board, the Vice President, in the absence or disability of the President, shall have the power and shall perform the duties of the President. If there is more than one Vice President, the Board shall specify the order in which they shall so act. Each Vice President also shall have such powers and shall perform such duties as may be delegated to such Vice President by the President or prescribed by the Board.

¶ 11,075

Section 4.9. *Secretary*

The Secretary shall keep the minutes of all meetings of the Board and Members. The Secretary shall give or cause to be given notice of all meetings of the Board and

the Members and all other notices required by law or the By-Laws. In the event of the absence of the Secretary or the refusal by the Secretary to do so, any such notice may be given by any person so directed by the President or by the directors or by the Member or Members upon whose request the meeting is called. The Secretary shall have charge of the corporate books and records. The Secretary shall have custody of the seal of the Corporation and shall affix the seal to all instruments requiring such seal when authorized by the Board or President and shall attest the same. In general, the Secretary shall perform all duties customarily incident to the office of secretary.

¶ 11,077

Section 4.10. *Treasurer*

The Treasurer shall have custody of all funds and securities of the Corporation. The Treasurer shall enter or cause to be entered in the books of the Corporation to be kept for the purpose, full and accurate accounts of all monies received and paid out on account of the Corporation and, when required by the Chairman or the President, shall render a statement of the accounts. The Treasurer shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the Corporation. The Treasurer at all reasonable times shall exhibit the books and accounts to any director of the Corporation upon application at the office of the Corporation during business hours. In general, the Treasurer shall perform all duties customarily incident to the office of treasurer.

¶ 11,079

Section 4.11. *Resignation*

Any officer may resign at any time. A resignation shall be written and shall take effect at the time specified therein. If no time is so specified, a resignation shall take effect at the time of its receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective. No resignation shall discharge any accrued obligation or duty of an officer.

¶ 11,081

Section 4.12. *Removal*

Any officer appointed by the Board may be removed as an officer (but not as a director) by the Board at any time with or without cause.

¶ 11,083

Section 4.13. *Vacancies*

If the office of any officer becomes vacant, the Board may appoint any qualified person to fill such vacancy. Any person so appointed shall hold office for the unexpired term of the predecessor of such person and until the successor of such person is elected or appointed and qualified.

ARTICLE V

Clearing Members

¶ 11,085

Section 5.1. ***Status of Clearing Members***

(a) Only Clearing Members shall be entitled to clear Contracts with the Corporation, except that, if the Board so determines, the Corporation may clear contracts, options or other instruments for members of any other clearing organization in connection with the linkage of an Exchange with another board of trade, exchange or market which is not an Exchange. Each Clearing Member shall have the privilege of clearing with the Corporation all Contracts traded on or subject to the rules of each Exchange of which it is a member or member firm (or, in the case of CFFE Clearing Members, CFFE), whether for customer or proprietary account, as specified in paragraph (b) of this Section 5.1.

(b) The Board may designate Clearing Members, at their request, as CFFE Clearing Members, Class B Clearing Members or Self-Clearing Clearing Members, subject to the following:

(i) A CFFE Clearing Member may only clear Contracts effected on or subject to the rules of CFFE;

(ii) A Class B Clearing Member may only clear Contracts in such financial instruments as may be approved from time to time by the Board, but only as part of arbitrage transactions for its proprietary account with an Arbitrage Bank; and

(iii) A Self-Clearing Clearing Member may clear Contracts effected on or subject to the rules of an

Exchange, but only for the proprietary account of such Self-Clearing Clearing Member.

(c) Each Clearing Member shall have the privileges, rights and obligations provided for in and pursuant to these By-Laws and the Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in these By-Laws or the Rules.

¶ 11,087

Section 5.2. *Eligibility Requirements*

To become and remain a Clearing Member and to have the privilege of clearing Contracts effected on or subject to the rules of one of more Exchanges, a Person must:

(a) Be either a member or a member firm of such Exchange or Exchanges, except that until March 7, 2000, CFFE Clearing Members need not be members or member firms of any Exchange, after which any CFFE Clearing Member which has not become a member or member firm of NYCE shall automatically and without any further act by the Corporation cease to be a CFFE Clearing Member;

(b) If an Entity, have one person, satisfactory to the Corporation, who is (i) a director, general partner, trustee or officer (or person occupying a similar status or performing similar functions), (ii) responsible for the clearing operations of such Person and (iii) authorized to act on behalf of such Person in all transactions with or involving the Corporation;

(c) Have Capital of at least $2,000,000 or, in the case of a Self-Clearing Member, $600,000;

(d) In the case of a Class B Clearing Member, be a non-bank entity associated with a single arbitrage bank approved by the Corporation for the purpose;

(e) In the case of a Self-Clearing Clearing Member, have been a self-clearing clearing member of either CCC or CFCCNY immediately prior to the Effective Date; and

(f) Have, in the judgment of the Board, such qualities of financial responsibility, operational capacity, experience, business integrity, reputation and competence as the Board, in its discretion, may consider necessary or appropriate to be a Clearing Member.

¶ 11,089

Section 5.3. ***Procedure for Becoming a Clearing Member***

(a) Any Person desiring to become a Clearing Member (including without limitation a CFFE Clearing Member, a Class B Clearing Member, or a Self-Clearing Clearing Member) must file an application with the Corporation in such form as the Corporation may prescribe, shall furnish such documents and information as the Corporation may request and shall pay such application fee as the Board may prescribe. The filing of any such application, documents and information, and the action by the Corporation with respect thereto, shall be as provided in the Rules.

(b) The Board shall have final authority to grant or deny an application to become a Clearing Member and shall deny the application of any Person which does not meet the eligibility requirements set forth in Section 5.2; provided, however, that if the Board proposes to deny any

such application, it shall so notify the applicant in writing, setting forth the grounds upon which the Board proposes to deny such application, and the applicant, upon written request made within ten days after the date of receipt of such notification, shall be entitled to a hearing before the Board. Any such hearing shall be conducted pursuant to rules and procedures adopted by the Board which, in the judgment of the Board, are sufficient to give such applicant an opportunity fully and fairly to present to the Board the applicant's reasons why the application should be granted.

(c) If the Board grants an application to become a Clearing Member, the Corporation shall promptly give the applicant written notice thereof, specifying each Exchange whose Contracts the applicant is entitled to clear. Such applicant shall become a Clearing Member at such time as the Applicant has (i) deposited such amount in the Guaranty Fund as may be required pursuant to Section 5.4 of these By-Laws, and (ii) filed with the Corporation such agreements, undertakings and documents as the Corporation may require; provided, however, that if such applicant has not complied with the foregoing provisions within 30 days after the applicant was given written notice of approval of its application, the application shall be deemed to have been withdrawn.

(d) If, in accordance with paragraph (b) of this Section 5.3, the Board denies an application to become a Clearing Member, the Corporation shall give the applicant written notice of the Board's decision, setting forth the grounds therefor, and such decision shall be the final action of the Corporation.

¶ 11,091

Section 5.4. *Guaranty Fund*

The Corporation shall establish and maintain a Guaranty Fund.

(a) Each Clearing Member (other than a Self-Clearing Clearing Member) shall deposit and maintain in the Guaranty Fund an amount equal to the greater of:

(i) 10% of its Capital (which, solely for the purposes of this clause (i), shall mean the lesser of the amount of its actual Capital or such amount as may have been designated by it for Position Limit purposes pursuant to Section 5.6(a)(v) of these By-Laws); or

(ii) the amount calculated as follows:

(A) Divide the total number of futures contracts, options and other contracts or instruments traded on or subject to the rules of each of the Exchanges which were cleared for such Clearing Member by the Corporation and by any Former Clearing Organization for such Exchanges for the period of six months ending the date as of which the calculation is made, by the total number of futures contracts, options and other contracts or instruments involving such commodities which were cleared by the Corporation and any Former Clearing Organization during such six-month period, and multiply the resultant fraction by ⅕ of the total amount then on deposit in the Guaranty Fund.

(B) Divide the total daily gross open interest in futures contracts, options and other contracts or instruments carried by the Corporation and by any Former Clearing Organization during such six-month period for

such Clearing Member by the total daily gross open interest in futures contracts, options and other contracts or instruments carried by the Corporation and any Former Clearing Organization for all Clearing Members during such six-month period and multiply the resultant fraction by ⅘ of the total amount then on deposit in the Guaranty Fund.

(C) For each Clearing Member, add the amounts computed pursuant to subparagraphs (A) and (B);

provided, that (except as provided in paragraph (b) of this Section 5.4) no Clearing Member shall be required to deposit or maintain in the Guaranty Fund less than [Illegible]000 or more than $3,500,000. The amount of each Clearing Member's required Guaranty Fund deposit shall be recalculated as of the last Business Day each March, June, September and December.

(b) Each Self-Clearing Clearing Member shall deposit and maintain $30,000 in the Guaranty Fund, all of which shall be in the form of cash.

(c) Except as provided in paragraph (b) of this Section 5.4, deposits in the Guaranty Fund may be made by any Clearing Member in the form of cash or securities which are direct obligations of the United States Government, and which have such maximum time to maturity as the Corporation may prescribe; provided that each Clearing Member shall deposit a minimum of $50,000 in the form of cash. Any such securities shall be valued in accordance with such methodology as may be adopted by the Board.

(d) Guaranty Fund deposits shall be held in a bank approved for the purpose by the Corporation, in an account or accounts separate from all other cash and securities held by the Corporation. The Corporation shall have the sole right to withdraw cash or securities from, or to authorize the sale or other disposition of any securities held in, such account or accounts subject to the rights of any assignee, pledgee or holder of a security interest in the Guaranty Fund or any cash or securities therein.

(e) So long as any Person is a Clearing Member and thereafter for the period until the Corporation returns such person's Guaranty Fund deposits as provided in paragraph (i) of this Section 5.4, the Guaranty Fund deposits of such person may be applied by the Corporation:

(i) against any amounts that become due from such Person to the Corporation for any reason (including but not limited to original margin, variation margin, option premiums, dues, assessment, fines and reimbursement of any amounts paid by the Corporation to a Cross Margining Clearing Organization under any Cross Margining Program) at any time it was a Clearing Member and for a period of six months after it ceases being a Clearing Member;

(ii) against any amounts that are charged as provided in or pursuant to Section 5.5 of these By-Laws against the Guaranty Fund deposits of all Clearing Members at any time that such Person was a Clearing Member and for a period of six months thereafter; and

(iii) to provide such funds, on such terms and conditions, as the Board in its discretion, acting by a vote of not less than three-fourths of all directors eligible to vote, may deem necessary or appropriate to

facilitate the transfer of customer accounts from a Clearing Member experiencing financial difficulty to another Clearing Member, if the Board shall determine by such vote that to do so is in the best interests of the Corporation.

(f) The Corporation may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Corporation (plus interest, fees and other amounts payable in connection therewith). Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Corporation (including the collateralization thereof) in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Member to the Corporation for which such cash, securities or other property was pledged to or deposited with the Corporation. Any funds so borrowed shall be used and applied by the Corporation solely for the purposes for which cash, securities and other property held in the Guaranty Fund are authorized to be used pursuant to these By-Laws and Rules; provided that the failure of the Corporation to use such funds in accordance with this subsection shall not impair any of the rights or remedies of any assignee, pledgee or holder of any such lien or security interest. Cash, securities and other property held in the Guaranty Fund, subject to the rights and powers of the Corporation with respect thereto as set forth in these By-Laws, the Rules and any agreements between any Clearing Member and the Corporation, and subject to the rights and powers of any person to which the Guaranty Fund or any cash, securities or other property held therein shall have been

assigned, pledged, repledged or otherwise subjected to a lien or security interest, shall remain the property of the respective Clearing Members depositing such cash securities and other property.

(g) Subject to the rights of any assignee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Section 5.4, if at any time the amount of any cash, plus the value of any securities, on deposit in the Guaranty Fund for any Clearing Member

(i) shall exceed the amount required to be on deposit for such Clearing Member by more than such amount as the Board may prescribe, the Corporation will return the excess to such Clearing Member upon its written request.

(ii) shall be less than the amount required to be on deposit for such Clearing Member, such Clearing Member shall restore the deficiency (including, without limitation, a deficiency caused by the application of such Clearing Member's deposits in the Guaranty Fund as described in Section 5.4(e) of these By-Laws) on demand; provided, however, that a Clearing Member that has withdrawn as a Clearing Member shall not be required to restore a deficiency occurring after the effective date of its withdrawal; and, further provided, that if and to the extent that any such deficiency is caused by the application of such Clearing Member's deposits in the Guaranty Fund to meet a Monetary Default pursuant to Section 5.5(b)(iii) of these By-Laws, any amounts deposited with the Corporation to restore such deficiency shall not be applied to further meet the same Monetary Default.

(h) Any interest earned on any securities deposited in the Guaranty Fund by a Clearing Member shall belong

and be credited to such Clearing Member. The Corporation may invest any cash deposited in the Guaranty Fund in securities which are direct obligations of the United States Government and may engage in repurchase transactions with any cash or securities on deposit. Any interest, capital gain or other income earned on any such securities shall belong and be credited to the Corporation.

(i) Subject to the rights of any assignee, pledgee or holder of a lien or security interest as provided in subsection (f) of this Section 5.4, whenever a Person ceases to be a Clearing Member, the Corporation shall return to such Person the amount of cash and securities on deposit in the Guaranty Fund for such Person; provided, however, that the Corporation shall not be required to so return such cash and securities after the effective date of the termination of such Clearing Membership until six months after the last date on which such Person either had any open positions carried by the Corporation or had any futures contracts, options or other contracts or instruments cleared by the Corporation (or such longer period as the Board may prescribe), unless the Corporation receives guaranties or other security satisfactory to it to assure the availability of any amounts to be applied as provided in subsection (e) of this Section 5.4.

(j) If the Guaranty Fund or any part therefore is lost as a result of the insolvency of any bank or other depository, embezzlement, defalcation or any reason other than use pursuant to Section 5.5 of these By-Laws, such loss may, in the discretion of the Board, be restored by application of the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose; and

(ii) assessments levied by the Corporation upon the Clearing Members, which assessments shall be paid to the Corporation at such time and in such manner as the Board may specify. The amount of a Clearing Member's assessment shall be in the amount derived by multiplying the loss by a fraction, the numerator of which shall be the amount of such Clearing Member's required deposit in the Guaranty Fund on the day preceding the loss and the denominator of which shall be the total amount required to be in the Guaranty Fund on such day.

(k) In the event that the Corporation accepts a transfer of cash or securities from a guaranty fund of any other clearing organization of which a Clearing Member is or was a member to satisfy in whole or in part the obligations of such Clearing Member to deposit and maintain funds in the Guaranty Fund, the Corporation shall (to the extent of the amount of the cash and the value of the securities so transferred) guaranty payment by such Clearing Member to such clearing organization of any amount, the payment of which would have been secured by such Clearing Member's deposit in the guaranty fund of such other clearing organization. If the Corporation is required to make any payment pursuant to such guaranty as to any Clearing Member, the Corporation may withdraw the amount thereof out of the Guaranty Fund, and such Clearing Member will restore the amount so withdrawn on demand.

(l) In the event that the Guaranty Fund or any part thereof shall have been applied as described in paragraph

(e) of this Section 5.4 or shall have been lost as described in paragraph (j) of this Section 5.4, and the Corporation shall thereafter recover any amount so applied or lost from any Person liable therefor, the amount of such recovery (after deducting any expenses (including without limitation legal fees and expenses incurred in connection therewith) shall be credited to the Guaranty Fund deposits of each Clearing Member in that proportion which the amount required to be on deposit by such Clearing Member bears to the amount required to be on deposit by all Clearing Members as of the date upon which such application took place or such loss was incurred.

(m) Any expense (including without limitation legal fees and expenses) incurred by the Corporation in connection with the deposit by a Clearing Member of assets into the Guaranty Fund, or the return thereof to such Clearing Member, may at the option of the Corporation be charged to such Clearing Member.

Amended by the Board April and May 1999; effective January 2000.

¶ 11,093

Section 5.5. *Monetary Defaults; Use of Guaranty Fund; Assessments*

If any Clearing Member fails to deposit with, or pay to, the Corporation in full any original margin, variation margin, option premium or other sum (not including any dues, assessments or fines) under or in connection with any Contract, or fails to satisfy any reimbursement obligation to the Corporation in full under or in connection with any Cross Margining Program, when and as required by or pursuant to the rules of the Listing Exchange, the Rules of the Corporation or pursuant to the terms of any Cross Margining Program, such failure shall constitute a "Monetary Default." If and at such times as the Corporation has in effect a procedure whereby deposits or payments of sums with or to the Corporation are effected by having the Corporation instruct the Clearing Members' banks to wire transfer funds from their accounts with such banks directly to the accounts of the Clearing Corporation, a Clearing Member shall be deemed to have failed to deposit or pay any sum when and as required if such Clearing Member's bank fails so to wire transfer funds when and as instructed by the Corporation. In the event that at any time a Monetary Default occurs on the part of any Clearing Member (the "Defaulting Clearing Member"), then:

(a) Such Defaulting Clearing Member's original margin on deposit with the Corporation (in both customer and proprietary accounts), its Guaranty Fund deposits and any of its other assets under the control of the Corporation shall be applied by the Corporation to pay the amount owing (the "Defaulted Obligation") as hereinafter set forth. If and to the extent a Monetary Default relates to a

Contract carried in the customer account of a Defaulting Clearing Member, such margin, Guaranty Fund deposit and other assets (whether held for the proprietary account or the customer account) shall be applied to pay the Defaulted Obligation. If and to the extent a Monetary Default relates to a Contract carried in the proprietary account of a Defaulting Clearing Member, such Guaranty Fund deposit, but only that portion of such margin and such other assets as are held for the proprietary account, shall be applied to pay the Defaulted Obligation. The Defaulting Clearing Member shall immediately restore any deficiencies in its margin and Guaranty Fund deposits resulting from any such application.

(b) If the margin, Guaranty Fund deposit and other assets of a Defaulting Clearing Member under the control of the Corporation are in the aggregate less than the Defaulted Obligation, and if the Defaulting Clearing Member fails to pay the Corporation the amount of the deficiency on demand, such Defaulting Clearing Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Clearing Member, shall be met from the following sources of funds in the order listed (each such source to be fully utilized before the next following source is applied):

(i) such portion, if any, of the surplus of the Corporation as the Board determines to be available for such purpose;

(ii) If the President, with the concurrence of the Chairman or the Vice Chairman, so determines, a loan on such terms and conditions as they may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty

Fund or the cash, securities and other property held in the Guaranty Fund as provided in Section 5.4(f) of these By-Laws);

(iii) subject to Section 5.4(g)(ii) of these By-Laws, the Guaranty Fund;

(iv) insurance proceeds, if any, received by the Corporation in connection with the Monetary Default giving rise to the Defaulted Obligation; and

(v) assessments levied by the Corporation upon the Clearing Member (other than the Defaulting Clearing Member) as hereafter provided in this Section 5.5.

The total amount to be assessed at any one time pursuant to clause (v) of this paragraph (b) is hereinafter called the "Assessment Amount."

(c) The amount of any assessment levied on any Clearing Member shall be computed as follows:

(i) Divide the number of futures contracts, options and other contracts or instruments involving all commodities traded on or subject to the rules of any Exchange which were cleared for such Clearing Member by the Corporation and by any Former Clearing Organization for the period of six months preceding the Monetary Default by the total number of futures contracts, options and other contracts or instruments involving in such commodities cleared by the Corporation and any Former Clearing Organization during such six-month period for all Clearing Members being assessed, and multiply the resultant fraction by 20% of the Assessment Amount.

(ii) Divide the total daily gross open interest in futures contracts, options and other contracts or instruments involving such commodities carried by

the Corporation and any Former Clearing Organization during such six-month period for such Clearing Member by the total daily gross open interest in futures contracts, options, and other contracts or instruments carried by the Corporation and any Former Clearing Organization during such six-month period for all Clearing Members being assessed, and multiply the resultant fraction by 80% of the Assessment Amount.

(iii) For each Clearing Member, add the amounts computed pursuant to subparagraphs (i) and (ii). The total shall constitute the amount of the assessment to be levied on such Clearing Member pursuant to this paragraph (c).

(d) If the amount assessed against any Clearing Member as determined pursuant to paragraph (c) of this Section 5.5 would exceed the maximum set forth in paragraph (c) of this Section 5.5, or if the amount assessed against any Clearing Member shall exceed the amount paid by such Clearing Member, the excess shall be assessed against the other Clearing Members (other than the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum permitted by paragraph (e)) in accordance with such subparagraph (c), as if the excess were the Assessment Amount. Assessments pursuant to this paragraph (d) shall be repeated until the entire Assessment Amount shall have been assessed.

(e) If a Person shall withdraw as a Clearing Member, and if on the Withdrawal Date no assessment shall have been imposed upon such Clearing Member within the period of ten Business Days preceding the Withdrawal Date, or if on the Withdrawal Date an assessment shall have been so imposed during such period and such

assessment shall have been paid in full (subject to the Assessment Cap), then the total amount that may be assessed against such Clearing Member pursuant to this Section 5.5 on and after the first day of such period shall not exceed an amount (the "Assessment Cap") which is the lesser of:

(i) 25% of such Clearing Member's Capital; or

(ii) $10 million.

Amounts deposited by Clearing Members in the Guaranty Fund, including without limitation amounts deposited to restore a deficiency as provided in Section 5.4(g)(ii) do not constitute assessments imposed or paid and are not subject to the Assessment Cap.

(f) If in any case, because of the limitations contained in paragraph (e) of this Section 5.5, the maximum permitted assessments are less than the Assessment Amount, the Board shall determine what if any further action to take, provided that under no circumstances may the Board levy assessments on any Clearing Member that would exceed the limitations contained in paragraph (e) of this Section 5.5.

(g) Notwithstanding any other provision of these By-Laws, a Person which withdraws as a Clearing Member shall be subject only to assessments imposed to meet:

(i) Monetary Defaults occurring prior to the date on which such Clearing Member's withdrawal becomes effective or such Person otherwise ceases to be a Clearing Member (the "Withdrawal Date"), subject to the limitations contained in paragraph (e) of this Section 5.5;

(ii) assessments levied under Section 5.4(j) of these By-Laws prior to the effective date of such Clearing Member's withdrawal; and

(iii) the first Monetary Default occurring after the Withdrawal Date, subject to the limitations contained in paragraph (e) of this Section 5.5.

(h) All assessments shall be due and payable within such time as the Corporation may prescribe. If any Person shall not pay any assessment when due, such Person shall continue to be liable therefor, but the Corporation may assess the Clearing Members (other than such Person, the Defaulting Clearing Member and any Clearing Member that shall have been assessed the maximum amount permitted by paragraph (e)) for the unpaid amount in accordance with paragraphs (c) and (d) of this Section 5.5.

(i) If, after making any assessments to meet any Defaulted Obligation owing by a Defaulting Clearing Member as referred to in paragraph (b), or to meet any assessment not paid as referred to in paragraph (h), the Corporation collects the amount of such Defaulted Obligation or such unpaid assessment in whole or in part from the Person or Persons liable therefor, the Corporation shall refund the amount so collected (net of any expenses, including without limitation any legal fees incurred in connection therewith) pro rata to the Clearing Members that had been assessed to meet such Defaulted Obligation or nonpayment and had paid the amount so assessed.

Amended by the Board April and May 1999; effective January 2000.

¶ 11,095

Section 5.6. ***Position Limits***

(a) The Board shall establish a Position Limit on the total Net Interest and the total Offset Interest that each Clearing Member may have open with the Corporation at any one time, subject to the following:

(i) The Position Limit established for each Clearing Member shall be based on the Board's evaluation of the financial and operational capacity of such Clearing Member and such other factors as the Board, in its discretion considers appropriate, including, but not limited to, (A) the Capital, business needs and financial condition of the Clearing Member; (B) the number of memberships on other clearing organizations held by the Clearing Member; (C) the average number of contracts cleared by the Clearing Member through each clearing organization each day and each month during the preceding twelve months and the extent to which such contracts were cleared for either customer accounts, proprietary accounts, or both; (D) the length of time the Clearing Member has been a Clearing Member and/or a clearing member of any Former Clearing Organization; and (E) the number of guarantees given by such Clearing Member of the obligations of any member of any futures or options exchange in the United States.

(ii) A Clearing Member may not have a Position Limit in excess of the maximum set forth below for the amount of such Clearing Member's Capital:

Capital	*Maximum Net Interest and Offset Interest*
$250,000,001 and over	100,000
150,000,001 – 250,000,000	80,000
100,000,001 – 150,000,000	65,000
75,000,001 – 100,000,000	50,000
50,000,001 – 75,000,000	40,000
40,000,001 – 50,000,000	32,000
30,000,001 – 40,000,000	28,000
20,000,001 – 30,000,000	24,000
15,000,001 – 20,000,000	20,000
10,000,001 – 15,000,000	16,500
9,000,001 – 10,000,000	13,000
8,000,001 – 9,000,000	12,000
7,000,001 – 8,000,000	10,500
6,000,001 – 7,000,000	9,500
5,000,001 – 6,000,000	8,500
4,000,001 – 5,000,000	7,000
3,000,001 – 4,000,000	5,500
2,500,001 – 3,000,000	4,000
2,000,000 – 2,500,000	3,000

For purposes of this paragraph, the Board may in its discretion treat the Capital of a Clearing Member (A) as unconditional, irrevocable letter of credit deposited with the Corporation, payable to the order of the Corporation, in a form and from a bank acceptable to the Corporation; (B) a pledge of cash, securities or other assets that is or are not the property of such Clearing Member, in a form acceptable to the Corporation; and/or (C) an unconditional guarantee in favor of the Corporation, in a form and from a guarantor acceptable to the Corporation provided that such a guarantee shall be accepted only (i) from a Clearing Member which had a similar guarantee on deposit with a Former Clearing

Organization immediately prior to the Operational Date, (ii) in an amount not exceeding the amount of such similar guarantee, and (iii) for a period expiring one year after the Operational Date. The use of such letters of credit, pledges and guarantees shall be subject to such limitations as the Corporation, in its discretion, may establish in any particular case. The amount of any letter of credit deposited by a Clearing Member pursuant to Clause (A) may not exceed the amount of such Clearing Member's Capital, except that any Clearing Member which immediately prior to the Operational Date was a clearing member of CCC or CFCCNY and had a letter of credit on deposit with CCC or CFCCNY in an amount exceeding such Clearing Member's Capital may, for a period of one year following the Operational Date, have on deposit with the Corporation a letter of credit in an amount not exceeding the amount of the letter of credit which had been on deposit with CCC or CFCCNY, regardless of the amount of such Clearing Member's Capital.

(iii) Any Clearing Member whose Position Limit is set at a level less than the maximum Net Interest or Offset Interest set forth in subparagraph (ii) of this paragraph (c) may file a written request with the Corporation for an increase in such Position Limit. The Board, with or without a hearing as it may consider proper, shall take such action thereon as it may deem appropriate.

(iv) Except as provided in paragraph (c) of this Section 5.6, no Clearing Member may have a Position Limit in excess of 100,000 Contracts, regardless of its Capital.

(v) Any Clearing Member may elect to have its Position Limit established on the basis of an amount

of Capital designated by it which is less than its actual Capital by giving written notice of such designation to the Corporation.

(b) Notwithstanding the provisions of subparagraph (i) of paragraph (a) of this Section 5.6, any Clearing Member which was a clearing member of CCC, CFCCNY or both immediately prior to the Operational Date shall initially have a Position Limit which is the sum of its position limits on CCC and CFCCNY immediately prior to the Operational Date, subject to being changed as provided in paragraph (e) of this Section 5.6.

(c) No Clearing Member may have with the Corporation a total Net Interest or a Total Offset Interest in excess of such Clearing Member's Position Limit, except that notwithstanding subparagraphs (ii) and (iv) of paragraph (a) of this Section 5.6) a Clearing Member may exceed its Position Limit up to, but not in excess of, 50 percent of such Position Limit, provided that such Clearing Member deposits with the Corporation (in addition to all other deposits and payments for margins, fees and other charges which may be required) original margin as follows:

(i) For Contracts which exceed such Position Limit by not more than 25 percent of such Position Limit, an amount equal to 50 percent of the maximum amount of margin required for any Contract (including any surcharge based on position size), as prescribed by the Corporation from time to time; and

(ii) For Contracts which exceed such Position Limit by more than 25 percent but not more than 50 percent of such Position Limits, an amount equal to 100 percent of the maximum amount of margin

required for any Contract (including any surcharge based on position size), as prescribed by the Corporation from time to time.

Any funds so deposited by any Clearing Member shall be deposited for the proprietary account, and not the customer account, of such Clearing Member.

(d) Any Clearing Member whose Net Interest or Offset Interest exceeds the Position Limit imposed on such Clearing Member pursuant to Section 5.6 of the By-Laws by more than the amount permitted by paragraph (c) thereof shall transfer and/or liquidate such number of Contracts as may be necessary to eliminate the excess within such time as the Corporation may prescribe and shall report to the Corporation when such transfers and/or liquidations have been completed. If a Clearing Member fails so to transfer and/or liquidate Contracts within the time prescribed by the Corporation, the Corporation may liquidate such Contracts as the Corporation deems necessary on behalf of such Clearing Member in accordance with Rule 803. The Corporation in its discretion may require any Clearing Member whose Net Interest or Offset Interest exceeds its Position Limit by more than the amount permitted by paragraph (c) thereof to deposit with the Corporation, in such form and by such time as it shall specify, such additional original margin as the Corporation determines is necessary with respect to the excess until such excess has been eliminated. Any instance of a Clearing Member exceeding a Position Limit by more than the amount permitted by paragraph (c) thereof is a violation of the Rules which subjects a Clearing Member to possible disciplinary action under the Rules.

(e) For purposes of this Section 5.6:

(i) The term "Contracts" shall include options converted to futures contract equivalents in accordance with such procedures as the Corporation may adopt from time to time; and

(ii) The Net Interest and Offset Interest of each Clearing Member shall be calculated in accordance with such formulas and procedures as the Corporation may adopt from time to time.

(f) The Board or the President may at any time reduce the Position Limits of any Clearing Member if in the judgment of the Board or the President such reduction is necessary for the protection of the Corporation. After receiving notice of any such reduction in its Position Limit, a Clearing Member shall transfer and/or liquidate any Contracts in excess of the reduced Position Limit within such time as the Board or the President may prescribe. Any such action by the President will be subject to revocation or modification by the Board, and the Board will review any such action taken by the President not later than its next regularly scheduled meeting.

(g) Where any two or more Clearing Members are Affiliated Persons, the Board may impose limits on the size of the positions that such Clearing Members may in the aggregate carry with the Corporation.

¶ 11,097

Section 5.7. *Original Margin*

(a) Each Clearing Member shall deposit with the Corporation original margin in respect of all Contracts carried by the Corporation for such Clearing Member

(customer and proprietary) in such amounts, in such forms, and by such times as the Corporation may require from time to time.

(b) Margin shall be collected by the Corporation in accordance with the methods and procedures specified in or pursuant to the Rules.

(c) The Corporation may establish Cross Mrgining [sic] Programs with one or more Cross Margining Clearing Organizations permitting Clearing Members to subject eligible positions to cross-margining treatment. Each such Cross Margining Program shall be conducted in accordance with a cross margin agreement between the Corporation and one or more Cross Margining Clearing Organizations.

Amended by the Board April and May 1999; effective January 2000.

ARTICLE VI

Indemnification; Liability

¶ 11,101

Section 6.1. ***Indemnification by Corporation***

(a) Except to the extent specifically prohibited by the BCL, the Corporation shall promptly indemnify each person who is or at any time was a director or officer of the Corporation, whether or not then in office, who is made or is threatened to be made a party to any action or proceeding, threatened or pending, and whether civil, criminal or administrative and whether or not brought by or in the right of the Corporation, or who is the subject of an investigation by any governmental agency,

Self-Regulatory Organization (other than the Corporation), securities exchange, securities clearing organization, registered securities association or other self-regulatory body, by reason of the fact that such person is or was a director or officer of the Corporation, or serves or served any other corporation, or Entity in any capacity at the request of the Corporation, against judgments, fines, amounts paid in settlement and expenses (including reasonable attorneys' fees), actually and necessarily incurred in connection with such action or proceeding, or any appeal therein, or any such investigation.

(b) The Corporation shall advance or promptly reimburse upon request of a person referred to in subsection (a) of this Section 6.1 all expenses, including reasonable attorneys' fees, actually and necessarily incurred by such person in connection with any action, proceeding or investigation of the kind referred to in said paragraph (a) in advance of the final disposition thereof, subject to receipt of a written undertaking by or on behalf of such person to repay such amounts if such person is ultimately found not to be entitled to indemnification under this Article or otherwise or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled, provided that such person shall cooperate in good faith with any request of the Corporation that common counsel be used by parties to any action, proceeding or investigation who are similarly situated unless to do so would be inappropriate because of actual or potential differing interests between such parties.

(c) A person for whom indemnification or the advancement or reimbursement of expenses is provided for under this Section 6.1 may elect to have the provisions of

this ARTICLE VI interpreted on the basis of the applicable statute in effect (i) at the time of the occurrence of the event or events giving rise to the action, proceeding or investigation, to the extent permitted by statute, or (ii) at the time indemnification or advancement or reimbursement of expenses is provided or sought.

(d) The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law.

(e) Indemnification under the provisions of this Section shall not be available to a director or officer in the event that a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the matter so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

(f) Indemnification shall be accorded by the Corporation and related expenses shall be advanced to members of any committee authorized by the By-Laws or Rules of the Corporation or established by the Board, and to employees of the Corporation, to the same extent as is provided to directors and officers of the Corporation. The foregoing right of indemnification shall not affect any rights to indemnification to which the persons described in this subsection (f) may be entitled by contract or otherwise under law.

¶ 11,103

Section 6.2. ***Indemnification by Resolution or Agreement.***

The Corporation, by a resolution of the Board or an agreement approved by the Board, may, to the fullest extent permitted by applicable statute, indemnify and advance or reimburse expenses to any person, including a person entitled to indemnification pursuant to Section 6.1, but nothing herein shall limit or affect the rights of any such person under that Section.

¶ 11,105

Section 6.3. ***Enforcement***

(a) The right to be indemnified or to the advancement or reimbursement of expenses pursuant to Section 6.1 or a resolution or agreement authorized pursuant to Section 6.2(i) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof or of any such resolution were set forth in a separate written contract between the Corporation and such person, and (ii) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution or agreement with respect to events occurring prior thereto.

(b) If a request to be indemnified or for the advancement or reimbursement of expenses pursuant to Section 6.1 or a resolution or agreement authorized by Section 6.2 is not paid in full by the Corporation within thirty days after a written claim has been received by an officer of the Corporation therefore and the claimant thereafter brings suit against the Corporation to recover

the unpaid amount of the claim which is successful in whole or in part, the Corporation shall be obliged to pay the claimant the expenses, including reasonable attorneys' fees, of actually prosecuting such claim.

¶ 11,107

Section 6.4. ***Indemnification By Clearing Members***

(a) If any action or proceeding is brought or threatened against the Corporation or any person entitled to be indemnified by the Corporation pursuant to Section 6.1 or Section 6.2 (such persons being collectively referred to as "Officials"), claiming, directly or indirectly, in whole or in part, that the Corporation or such Official has failed, neglected or omitted to prevent, detect or require any conduct by a Clearing Member or by an Affiliated Person of a Clearing Member, which conduct or lack thereof is alleged to constitute a violation of the Commodity Exchange Act, any other federal or state law, any Commission Regulation, any rule of any Self-Regulatory Organization, or any By-Law or Rule, such Clearing Member shall indemnify and hold harmless the Corporation and each such Official from and against all loss, liability, damage and expense (including but not limited to attorneys' fees, expenses of investigating such claim, judgments and amounts paid in settlement) incurred by or asserted against the Corporation or any such Official in or in connection with any such legal proceeding.

(b) If any such action or proceeding is brought against the Corporation or an Official which could result in indemnification by a Clearing Member pursuant to subsection (a) of this Section 6.4:

(i) Such party shall promptly give such Clearing Member notice thereof in writing.

(ii) Neither the Corporation nor any such Official may settle a claim to the extent it seeks the recovery of money damages without the prior consent of such Clearing Member; provided that if such Clearing Member does not consent to any proposed settlement within ten (10) days following the date it receives written notice of the terms of such settlement, the Corporation or such Official may require such Clearing Member to post such security for the payment of indemnification obligations to the Corporation or such Official as the Corporation or such Official deems necessary, but not in excess of the money damages claimed plus interest and anticipated expenses.

¶ 11,109

Section 6.5. ***Exculpation and Reimbursement of Corporation***

(a) NEITHER THE CORPORATION, NYBT NOR ANY EXCHANGE, NOR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE CORPORATION, NYBT OR ANY EXCHANGE, SHALL BE LIABLE TO ANY CLEARING MEMBER FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY ERROR, ACT OR OMISSION ON THE PART OF THE CORPORATION, OR ON THE PART OF ANY PERSON IN THE CAPACITY OF MEMBER OR IN THE CAPACITY OF DIRECTOR, COMMITTEE MEMBER, OFFICER, AGENT OR EMPLOYEE OF A MEMBER OR OF THE CORPORATION, WHETHER OR NOT SUCH DAMAGES ARE DUE TO NEGLIGENCE, UNLESS SUCH ERROR, ACT OR OMISSION WAS THE RESULT

OF WILLFUL OR WANTON CONDUCT OR WAS IN BAD FAITH.

(b) Any Clearing Member which institutes an action or proceeding against the Corporation, or any of the officers, directors, committee members, agents or employees of the corporation, and which fails to prevail in such action or proceeding, shall reimburse the Corporation and such officer, director, committee member, agent or employee for any and all costs or expenses (including but not limited to attorneys' fees, expenses of investigation and amounts paid by way of indemnifying any officers, directors, employees or other persons by the Corporation) incurred in connection with the defense of such action or proceeding.

¶ 11,111

Section 6.6. ***General***

(a) The indemnification and advancement or reimbursement of expenses granted pursuant to the provisions of Section 6.1 and 6.2 shall be in addition to and shall not be exclusive of any other rights to indemnification and advancement or reimbursement of expenses to which any person may otherwise be entitled by statute, the Certificate of Incorporation, insurance policy, contract or otherwise.

(b) For purposes of this Article VI, the terms: (i) "the Corporation" shall include any legal successor to the Corporation, including any corporation or other entity which acquires all or substantially all of the assets of the Corporation in one or more transactions; and (ii) "person" shall include the personal representative of an individual

described in this ARTICLE VI who is deceased or under a disability.

ARTICLE VII

Emergency Powers

¶ 11,113

Section 7.1. *Exchange-Determined Emergency*

If any Exchange determines that there is an Emergency, the Corporation shall take such action as may be ordered by, or as may be necessary or appropriate to implement emergency action ordered by, that Exchange with respect to (a) Contracts traded on or subject to the rules of that Exchange and cleared by the Corporation, and (b) Clearing Members of that Exchange.

¶ 11,115

Section 7.2. *Corporation-Determined Emergency*

If the Board, by a three-fourths vote of the members of the Board present and voting at any meeting, determines that there is an Emergency, it may place into immediate effect a rule which may provide for, or may authorize the Corporation to undertake, actions necessary or appropriate to meet the Emergency.

¶ 11,117

Section 7.3. *Inconsistent Determinations*

In the event of an inconsistency between a determination made by an Exchange as referred to in Section 7.1 and a determination made by the Corporation

pursuant to Section 7.2, the determination so made by the Exchange shall govern.

¶ 11,119

Section 7.4. *Physical Emergency*

If, in the judgment of the persons specified below, the physical functioning of the Corporation is, or is threatened to be, severely and adversely affected by a Physical Emergency, such persons are authorized to take such action as they deem necessary or appropriate to deal with such Physical Emergency. The persons authorized to take action pursuant to this Section 7.4 are any one of the following, in the order of their availability to take such action: (a) the Chairman; (b) any Vice Chairman; (c) the President; (d) any Vice President; and (e) any other officer of the Corporation.

¶ 11,121

Section 7.5. *Definitions*

For purposes of this ARTICLE VII of the By-Laws, the following terms shall have the following meaning:

(a) The term "Emergency" means any occurrence or circumstance which an Exchange determines constitutes an emergency or physical emergency in accordance with the by-laws or rules of that Exchange, or which the Board, pursuant to Section 7.2, determines requires immediate action and threatens or may threaten such things as the orderly matching, clearing or liquidation of, or delivery or exercise pursuant to, any Contract, including such matters as:

(i) Any Physical Emergency.

(ii) The bankruptcy or insolvency of any Clearing Member, or the initiation of any proceedings for the liquidation of any Clearing Member, or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Clearing Member which may affect the ability of that Clearing Member to perform its obligations under the By-Laws or the Rules.

(iii) Any circumstance in which it appears that a Clearing Member or any other person has failed to perform Contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customers' funds, of other Clearing Members, or of the Corporation.

(iv) Any circumstance or event which suddenly curtails the operations of one or more banks involved in the margining of Contracts; and

(v) Any other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the Corporation to submit, in a timely fashion, a reviewable rule to the Commission for prior approval.

(b) The term "Physical Emergency" means any circumstance which may have a severe, adverse effect upon the physical functions of the Corporation including, but not limited to, fire or other casualty, bomb threats, substantial inclement weather, power failures, communication breakdowns, transportation breakdowns and computer malfunctions.

ARTICLE VIII

Miscellaneous

¶ 11,123

Section 8.1. *Fiscal Year*

The fiscal year of the Corporation shall be fixed by resolution of the Board.

¶ 11,125

Section 8.2. *Seal*

The seal of the Corporation shall be circular in form and have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal" and "New York". If and when so directed by the Board or the President, a duplicate of the seal may be kept and used by the Corporation. The seal may be used by causing it or a facsimile thereof to be affixed or impressed or reproduced in any other manner.

¶ 11,127

Section 8.3. *Obligations*

All contracts, checks, notes and other evidences of indebtedness of the Corporation, and all other instruments and documents delivered on behalf of the Corporation, shall be signed by such officers of the Corporation or by such other person or persons as may be authorized by the Board.

¶ 11,129

Section 8.4. ***Amendment and Repeal***

These By-Laws may be amended or repealed, and any other By-Laws may be adopted, amended or repealed, by a majority of the votes of the shares at the time entitled to vote in the election of any directors. These By-Laws may also be amended or repealed, and any other By-Laws may be adopted, amended or repealed, by the Board by a vote of not less than two-thirds of all the members of the Board, but any By-Law adopted by the Board may be amended or repealed by the shareholders entitled to vote thereon.

RULES OF COMMODITY CLEARING CORPORATION
PART 1
General Provisions

¶ 11,151

Rule 101. ***Definitions***

Unless the context otherwise clearly requires, all terms defined in the By-Laws shall have the same meanings when used in these Rules, and in addition the following terms shall have the following meanings when used in these Rules:

The term "Act" means the Commodity Exchange Act, as in effect from time to time.

The term "Approved Financial Institution" means a bank, trust company or other institution designated as such by the Board pursuant to Rule 501.

The term "Approved Foreign Currency" means any currency other than the U.S. dollar which is deliverable under any Contract or which is approved

by the Board for any purpose under the By-Laws or these Rules.

The term "Arbitrage Bank" shall have the meaning set forth in Rule 210.

The term "Bank Holiday" means any day when banks in the State of New York generally are closed, as determined by the Corporation.

The term "By-Laws" means the by-laws of the Corporation, and the interpretations, resolutions, orders and directives of the Board thereunder, as in effect from time to time.

The term "Class B Members" means Clearing Members described in and subject to the provisions of Rule 210.

The term "customer" has the meaning set forth in Commission Regulation 1.3, as in effect from time to time.

The term "Designated Enforcement Staff" means the enforcement staff of the Exchange to which the Corporation has referred the investigation or settlement of, or the prosecution of disciplinary proceedings in connection with, any potential violation of the By-Laws and Rules, pursuant to Part 9 of the Rules.

The term "Exchange member" means a member of, and any person enjoying membership privileges on, an Exchange.

The terms "Exchange rules," "rules of the Listing Exchange" and "rules of an Exchange" mean the certificate of incorporation, by-laws, rules, regulations, resolutions, orders, directives and procedures of such

Exchange, and any interpretations thereof duly adopted by such Exchange, as in effect from time to time.

The term "Financial Emergency" means, with respect to any Clearing Member, any situation in which the financial or operational condition of such Clearing Member is not adequate for such Clearing Member to meet its obligations (including without limitation its obligations to comply with the By-Laws or these Rules) or to engage in business, or is such that it would not be in the best interests of the Corporation or the marketplace for such Clearing Member to continue in business.

The term "Government" means a security which is a direct obligation of the United States government.

The term "Order for Relief" means the filing of a petition in bankruptcy in a voluntary case and the adjudication of bankruptcy in an involuntary case.

The term "Settlement Price" shall mean the settlement price for any Contract as determined in accordance with the rules of the Listing Exchange of such Contract.

¶ 11,153

Rule 102. *Extension or Waiver of Rules*

(a) The time fixed by the Rules for the doing of any act or acts may be extended, or the doing of any act or acts required by the Rules may be waived, by the Board whenever, in its judgment, such extension or waiver is necessary or in the best interests of the Corporation.

(b) The time fixed by the Rules for filing any report of other document, for submitting any information or for

making deposits or payments of original margin, variation margin or premiums may be extended by the President whenever, in his judgment, such extension is necessary or in the best interests of the Corporation. A written report of any such extension, stating the pertinent facts an the reason such extension was deemed necessary or expedient, shall be presented to the Board at its next regular meeting. Any such extension may continue in effect after the event or events giving rise thereto; provided, however, that the time fixed for making deposits or payments of original margin, variation margin or premiums shall not be extended beyond two hours after the time such deposit or payment is due, and no other extension shall continue in effect for more than sixty calendar days, unless it is approved by the Board within such period.

¶ 11,155

Rule 103. *Action by the Corporation*

Except as otherwise specifically provided in the By-Laws or Rules, any action permitted or required by the By-Laws or Rules to be taken by the Corporation may be taken by the Board, the Chairman, the President or any other officer to whom authority has been delegated by the Board, the Chairman or the President.

¶ 11,157

Rule 104. *Headings*

The headings of the various Rules appear for convenience only and shall not affect the meaning of the language contained in the Rules.

¶ 11,159

Rule 105. *Confidential Treatment of Information Submitted by Clearing Member*

All information received by the Corporation concerning past or current positions carried by the Corporation or any other clearing organization for a Clearing Member, or concerning margin payments between the Corporation or any other clearing organization and a Clearing Member, or concerning deliveries made by or to a Clearing Member, and any financial statements filed with the Corporation by any Clearing Member, shall be held in confidence by the Corporation and shall not be made known to any other person except as follows:

(a) With the written consent of the Clearing Member involved;

(b) To the Commission or the United States Department of Justice pursuant to the requirements of the Act or any Commission Regulation;

(c) Pursuant to a subpoena issued by or on behalf of any person, or in the Corporation's discretion, pursuant to a written request from the Congress of the United States, any committee or subcommittee thereof, the General Accounting Office, or any department or agency of the United States, the State of New York or the City of New York;

(d) Pursuant to an order issued by a court having jurisdiction over the Corporation;

(e) To an Exchange of which such Clearing Member is a member for audit, compliance or market surveillance purposes; provided that the information so furnished to any Exchange shall be limited to

positions, margin payments and deliveries relating to Contracts on that Exchange; and provided further that the furnishing of any such information shall be subject to such terms and conditions as the Board, from time to time, may deem appropriate;

(f) To any person in the business of providing data processing or similar services for the purpose of performing computations or analysis, or of preparing reports or records, for the Corporation, subject to such terms and conditions as the Board, from time to time, may deem appropriate;

(g) To counsel for the Corporation; or

(h) To any other person if, to the extent and pursuant to such terms and conditions as the Board, from time to time, may deem appropriate.

If information concerning one or more named Clearing Members is requested pursuant to paragraphs (b), (c) or (d) above, the Corporation shall so notify each such Clearing Members prior to furnishing such information, unless in the judgment of the Corporation it would be contrary to the best interests of the Corporation to do so.

The Corporation may, to the extent permitted by law, require reimbursement from the person seeking such information for any out-of-pocket expenses incurred by the Corporation (including, but not limited to, compensation or Corporation personnel) in obtaining and making available information pursuant to this Rule 105.

¶ 11,161

Rule 106. *Employee Disclosures*

No employee of the Corporation may disclose to any other person any material non-public information obtained as a result of employment by the Corporation; provided, however, that this Rule 106 shall not prohibit disclosures made by such an employee:

(i) in the course of such employee's duties, or

(ii) as permitted under Rule 105.

¶ 11,163

Rule 107. *Trading Prohibition*

(a) An employee of the Corporation shall not trade, directly or indirectly, any commodity interest cleared by the Corporation or any related commodity interest, or any commodity interest cleared by any other commodities clearing organization where the employee of the Corporation has access to material non-public information concerning such commodity interest.

(b) The President (or, in the case of the President, the Board) may grant exemptions from the provisions of Rule 107(a) to employees on a case-by-case basis under circumstances which are not contrary to the purposes of this Rule, the Act, Commission Regulation 1.59, the public interest, or just and equitable principles of trade. Such circumstances may include, but are not necessarily limited to:

(i) Participation in pooled investment vehicles where the employee of the Corporation has no direct

or indirect control over Transactions executed by the pool;

(ii) Service as an executor or administrator of an estate;

(iii) Service in any other fiduciary capacity, such as an officer of a charitable organization, in which the employee receives no pecuniary benefit from the trading of commodity interests;

(iv) Trading in commodity interests cleared by any other commodities clearing organization under circumstances in which the employee's access to material non-public information as to those commodity interests is sufficiently minimal or attenuated so as to be insignificant; and

(v) Such other circumstances as the President (or, in the case of the President, the Board) may determine.

Participation in a Corporation-sponsored savings or retirement plan shall not be deemed to constitute trading directly or indirectly in a commodity interest, notwithstanding such plan's use of pooled funds which utilize commodity interests or the trading thereof.

(c) Any employee exempted under Rule 107(b) must:

(i) Furnish to the Corporation at the President's request (or, in the case of the President, to the Board at its request) account statements and other documents relevant to the trading activities that are so exempted; and

(ii) Inform the President (or, in the case of the President, the Board), within one Business Day of any material change of information that may affect the employee's qualification for such exemption.

(d) Terms used in this Rule 107 shall have the meanings set forth in Commission Regulation 1.59(a).

(e) If the President (or, in the case of the President, the Board), in his (or its) sole discretion, finds that any employee has committed a violation of this Rule 107, such employee shall be subject to such sanctions, including but not limited to demotion, suspension or discharge, as the President (or, in the case of the President, the Board), in his (or its) sole discretion, deems appropriate.

¶ 11,165

Rule 108. ***Improper Use or Disclosure of Material, Non-Public Information by Board Member or Committee Member***

(a) No member of the Board or any committee established by the Corporation shall use or disclose, for any purpose other than the performance of such person's official duties as a member of the Board or such committee, any material non-public information obtained by such person as a result of such person's participation on the Board or on any such committee; provided, however, that if any such person who effects any transactions after having received any such material, non-public information so obtained can show that such transaction was effected in the ordinary course of such person's business, such person shall not be deemed to have used such information in violation of this Rule 108(a), unless it can be shown that such person would not have effected such transaction in the absence of such information.

(b) For the purposes of this Rule 108, the terms "material" and "non-public information" each shall have the meaning set forth in Commission Regulation 1.59(a).

¶ 11,167

Rule 109. ***Consent to Disclosure of Certain Information***

A person, by becoming a member of the Board or a member of a committee established by the Board, shall be deemed irrevocably to authorize and direct each futures commission merchant at which such person maintains an account to furnish the Corporation with such documents and information relating to such person's trading in futures contracts, securities or options as the Corporation may from time to time request for the purpose of monitoring compliance with Rule 108, and to agree to furnish the Corporation with such information relating to any such trading as the Corporation may from time to time request.

¶ 11,169

Rule 110. ***Notices to Clearing Members***

The delivery by hand, electronic transmission, telefacsimile or telephone of any notice, order or other communication to a Clearing Member at the address, telefacsimile number or telephone number last designated by it, or to the locked box of such Clearing Member provided for under Rule 206, shall be good and sufficient delivery thereof to such Clearing Member.

PART 2

Clearing Membership

¶ 11,171

Rule 201. ***Obligations of Clearing Members***

A Clearing Member shall:

(a) At all times maintain an office to which all notices, orders and other communications from the Corporation may be transmitted or delivered. Such office shall be:

(i) at a location satisfactory to the Board,

(ii) kept open during normal business hours,

(iii) staffed on a full time basis by a general partner or officer of such Clearing Member who has been authorized and empowered by the Clearing Member to take any and all action with respect to such Clearing Member's positions with the Corporation, including but not limited to satisfying margin calls, paying option premiums, issuing and receiving delivery notices and furnishing reports and information, and

(iv) under the direct supervision and responsibility of an executive officer of such Clearing Member, who need not be physically located at such office.

(b) File with the Corporation such information regarding its shareholders, partners, members, officers, directors, management personnel and Affiliated Persons as the Corporation may require.

(c) Furnish the Corporation with such other information regarding the ownership, Control or

management of such Clearing Member as the Corporation may request.

(d) Notify the Corporation in writing prior to any change of Control in the Clearing Member, and not effectuate any change of Control without the prior approval of the Corporation.

(e) Notify the Corporation promptly in writing of any change other than a change of Control which would cause a statement furnished pursuant to paragraphs (b) and (c) of this Rule 201 to be inaccurate or incomplete.

(f) Establish and maintain accounts at an Approved Financial Institution for the deposit of funds (including without limitation Approved Foreign Currencies) and securities required to be transmitted to and from such Clearing Member pursuant to the By-Laws and these Rules, and to enter into arrangements with such Approved Financial Institution satisfactory to the Corporation for the transfer by wire or other means of funds and securities into and out of such accounts (separately for customer and proprietary accounts) on the order of the Corporation.

(g) Maintain such operational capability, including without limitation having such equipment, facilities and personnel, as in the judgment of the Corporation are necessary and desirable in order properly to perform the function of clearing Contracts with the Corporation and to comply with all of the obligations of the Clearing Member pursuant to the By-Laws and these Rules.

(h) Timely comply with all provisions of any agreements entered into by such Clearing Member with the Corporation.

(i) Otherwise timely comply with all provisions of the By-Laws and these Rules.

(j) Timely comply with all provisions of any Cross Margining Program.

Amended by the Board April and May 1999; effective January 2000.

¶ 11,173

Rule 202. *Reports to Clearing Members*

Each Clearing Member shall immediately (a) review every communication delivered to such Clearing Member by the Corporation and (b) report to the Corporation any error in such communication.

¶ 11,175

Rule 203. *Effectiveness of Termination of Authority*

Any power of attorney or other authorization to transact business with the Corporation given by a Clearing Member to any person shall remain in effect until a written notice of change pursuant to Rule 201(d) has been received by the Corporation.

¶ 11,177

Rule 204. *Receipt of Documents*

(a) The Corporation shall assign a locked box at the office of the Corporation (or of a designated agent of the Corporation) to each Clearing Member for the distribution

of forms, papers, documents, notice, statements and other such items as the Corporation deems appropriate.

(b) Every Clearing Member shall send an authorized representative to the office of the Corporation for receipt of any documents delivered pursuant to the Rules and of all items placed in the locked box of the Clearing Member at such intervals as may be necessary for the Clearing Member to perform all its obligations under the Rules, but not less frequently than once each Business Day.

(c) THE CORPORATION SHALL HAVE NO RESPONSIBILITY FOR THE FORM OR CONTENT OF ANY TICKET, CHECK, PAPER, DOCUMENT OR OTHER MATERIAL (OTHER THAN ANY SUCH MATERIAL PREPARED BY IT) PLACED IN THE LOCKED BOX ASSIGNED TO EACH CLEARING MEMBER, OR OTHERWISE HANDLED BY THE CORPORATION, OR FOR ANY IMPROPER OR UNAUTHORIZED REMOVAL FROM ANY SUCH BOX OR FROM THE CORPORATION'S FACILITIES OF ANY SUCH TICKET, CHECK, PAPER, DOCUMENT OR OTHER MATERIAL, INCLUDING ITEMS PREPARED BY THE CORPORATION.

* * *

(ii) If any such position is being carried or maintained by a futures commission merchant which is not a Clearing Member, provide to the Corporation, on each Business Day, by the time specified by the Corporation for the purpose, the information specified in Rule 404(b) concerning any such position.

(b) Each Clearing Member shall report to the Corporation, on each Business Day, by the time specified by the Corporation for the purpose, in such manner as may be prescribed by the Corporation, the number of long and short open positions in each Contract for each expiration month which such Clearing Member is carrying for any other Clearing Member as of the close of business on the preceding Business Day. Each such report shall separately specify positions carried for such other Clearing Member's proprietary account and customer account.

¶ 11,203

Rule 405. *Transfers of Open Positions*

Any transfer of a Contract shall be subject to the following:

(a) if the transferor shall have been declared to be in default, transfers may only be effected at the current day's settlement price unless the Corporation in its discretion determines that, because of excess margin on deposit or for other sufficient reason, accepting the transfer at other prices permitted by Exchange rules would not jeopardize the Corporation; and

(b) If, in any case, the Corporation in its discretion determines that it would be contrary to the best interests of the Corporation to accept a transfer at a price other than the current day's settlement price, it may, notwithstanding any provision to the contrary in the Exchange rules, require such transfer to be effected at such settlement price.

PART 5

Margins and Premiums

¶ 11,205

Rule 501. ***Approved Financial Institutions***

(a) A bank, trust company or other institution may be designated by the Board as an Approved Financial Institution for any or all of the following purposes: acting as a depository for margins and option premiums on behalf of Clearing Members, issuing or confirming letters of credit or acting in such other capacity as the Board may approve. To become designated as an Approved Financial Institution, a bank, trust company or other institution must submit an application in such form and containing such information as the Corporation from time to time may require and must meet such financial and other requirements as the Board may establish from time to time. A bank, trust company or other institution which has been designated by the Board as an Approved Financial Institution for any purpose may act as such until such designation is suspended or terminated in accordance with paragraph (d) of this Rule 501.

(b) If a bank, trust company or other institution does not meet all the requirements established by the Corporation pursuant to this Rule 501, or if the Board determines, based on such facts or considerations as the Board deems relevant or appropriate, that it would be in the best interests of the Corporation or its Clearing Members, the Board may:

(i) deny the application of such bank, trust company or institution for designation as an Approved Financial Institution,

(ii) suspend or terminate the status of such bank, trust company or institution as an Approved Financial Institution for any or all purposes, or

(iii) approve the application or permit the bank, trust company or other institution to continue as an Approved Financial Institution, subject in either case to such terms, conditions and limitations as the Board, in its judgment, deems appropriate.

(c) All checks or wire transfers by Clearing Members to the order of or to make payments to the Corporation must be drawn on or made by an Approved Financial Institution.

¶ 11,207

Rule 502. ***Margin and Premium Requirement***

(a) Each Clearing Member shall deposit with or pay to the Corporation original margin, variation margin and option premiums for each cleared Contract in such amounts, in such forms, at such times and in accordance with such systems as may be prescribed by or pursuant to these Rules or by the Board pursuant to Section 7.2 of the By-Laws.

(b) The Corporation shall retain the amount of original margin deposited with respect to any futures contract for which a delivery notice has been issued until: (i) in the case of any futures contract for which pro forma settlement is made, the Business Day after the day on which the Corporation receives the report referred to in Rule 601 that final settlement has been made, (ii) in the case of any futures contract for which pro forma

settlement is not made, the second Business Day after the applicable delivery day, and (iii) in the case of any futures contract with respect to which the Corporation has received a notice of claim pursuant Rule 401(b)(ii)(C), the day on which the Corporation receives written notice signed by both Clearing Members that final settlement has been made.

(c) The amount of variation margin on any Business Day for each account of a Clearing Member for any day shall be the net gain or loss, as the case may be, on all futures contracts in such account, represented by the difference between (i) the Settlement Price on such day of each futures contract in the account and (ii) the price at which each such futures contract was bought or sold on such day or the Settlement Price for each such futures contract in the account on the previous Business Day, as the case may be; provided, however, that in the case of any futures contract on an index, the amount of the final variation margin payment shall be determined as specified in the rules of the Listing Exchange.

(d)(i) The Agricultural Contracts Margin Committee shall consist of such number of persons as the Board shall determine from time to time, and shall have the power to establish and change original margin requirements for all agricultural contracts cleared by the Corporation.

(ii) The Financial Contract Margin Committee shall consist of such number of persons as the Board shall determine from time to time, and shall have the power to establish and change original margin requirements for all financial contracts cleared by the Corporation.

Amended by the Board December 8, 1998; effective January 29, 1999[(d)(i)(ii)].

¶ 11,208

Rule 502-A. *Cross Margining*

(a) The Corporation may establish Cross Margining Programs with Cross Margining Clearing Organizations under which Clearing Members shall receive cross margining treatment for certain Contracts traded on or subject to the rules of each of the Exchanges which were cleared for such Clearing Member by the Corporation. The Corporation shall determine which Contracts are eligible for cross margining.

(b) Each Clearing Member shall be entitled to participate in the Cross Margining Program, and, unless the Corporation determines otherwise, no Clearing Member shall be required to establish a separate cross margining account in order to receive cross margining treatment.

Adopted by the Board April and May 1999; effective January 2000.

¶ 11,209

Rule 503. *Cash Margin Deposits*

Each Clearing Member shall establish and maintain original margin accounts at an Approved Financial Institution of its choice with which the Corporation has entered into a cash settlement agreement containing bank holiday settlement procedures, which shall include separate proprietary and customer accounts. A Clearing Member may use such accounts for the payment of variation margin and option premiums as well as for the deposit of original margin, or may establish and maintain

a separate account at such Approved Financial Institution for its proprietary and customer accounts for the payment of variation margin and option premiums only. The Corporation shall have the right to instruct each Approved Financial Institution to debit each margin account maintained by a Clearing Member for any deposits of original margin or payments of variation margin or option premiums due to the Corporation pursuant to these Rules.

¶ 11,211

Rule 504. *Mechanics for Margins and Premium Payments*

(a) The Corporation shall advise each Clearing Member of the amount of original margin, variation margin and option premiums owing to or from such Clearing Member after the close of trading on each Business Day and shall:

(i) instruct the Approved Financial Institution at which a Clearing Member maintains margin accounts to wire transfer funds in the amount due from the appropriate account of the Clearing Member at such Approved Financial Institution to the appropriate account of the Corporation; and

(ii) instruct the Corporation's bank to wire transfer funds from the appropriate account of the Corporation to the appropriate account of the Clearing Member in the amount due to the Clearing Member, provided that original margin shall not be transferred to a Clearing Member's proprietary account on any day unless that Clearing Member has deposited and paid all margins, premiums and other amounts required from such Clearing Member for the proprietary account, the customer account or

otherwise, pursuant to the By-Laws and these Rules, and original margin shall not be transferred to a Clearing Member's customer account on any day unless the Clearing Member has deposited and paid all margins, premiums and other amounts required from such customer account shall have been deposited and paid.

Variation margin under any Contract shall be paid in the currency in which such Contract is settled pursuant to the Rules of the Listing Exchange.

(b) If the Corporation determines to make an intra-day call for either original margin or variation margin, the Corporation shall:

(i) Give notice to each Clearing Member which is required to make payment to the Corporation of the amount payable by such Clearing Member; and

(ii) Immediately after giving or making reasonable efforts to give the notice described in subparagraph (i), the Corporation may instruct the Approved Financial Institution at which each such Clearing Member maintains margin accounts to wire transfer funds from the appropriate account of each such Clearing Member into the appropriate account of the Corporation in the amount due to the Corporation as determined by the Corporation.

(c) Original margin shall initially be deposited in cash as provided in Rule 504(a). Thereafter, a Clearing Member may substitute for cash on deposit as original margin securities, Approved Foreign Currencies, and/or letters of credit meeting the requirements of Rule 505 and such other instruments as may be permitted by the Board. Such substitution shall be effected by delivering to the Corporation, by the time specified by the Corporation on

the day on which the Clearing Member wishes to make the substitution:

(i) the securities, Approved Foreign Currencies, letters of credit and/or other instruments; and

(ii) a request for the release of the cash original margin for which the securities, Approved Foreign Currencies, letters of credit or other instruments will be substituted.

(d) The Corporation shall return to a Clearing Member the amount of any excess original margin on deposit from such Clearing Member, provided that the Corporation receives a request for such a release from such Clearing Member by such time as may be specified by the Corporation on the day such release is to be made.

(e) Excess original margins shall not be released pursuant to Rule 504(d) on any day if the excess margin is due to a Clearing Member's house account unless the Clearing Member has deposited and paid all margins, premiums and other amounts required from such Clearing Member for the proprietary account, the customer account or otherwise pursuant to the By-Laws and these Rules; or, if the excess margin is due to the Clearing Member's customer account, unless the Clearing Member has deposited and paid all margins and premiums required from such customer account pursuant to the By-Laws and these Rules for such account.

(f) Upon notice from the Corporation that a transfer of funds from a Clearing Member's account pursuant to Rule 504(a) was not effected as instructed by the Corporation for any reason, the Clearing Member shall deliver to the Corporation the amount required at such time and in such form as the Corporation may prescribe.

(g) Net income, if any, generated by any securities, Approved Foreign Currencies or other instruments held by the Corporation as original margin for any Clearing Member shall belong and be credited to such Clearing Member.

¶ 11,213

Rule 505. *Deposit of Securities, Approved Foreign Currencies, and Letters of Credit as Original Margin*

(a) A Clearing Member may substitute securities for all or part of the cash it has on deposit with the Corporation as original margin, in accordance with Rule 504(c) and this Rule 505(a).

(i) The only securities eligible for deposit as original margin are Government, other sovereign debt approved by the Board and other securities deposited in accordance with cross-margining agreements with other clearing organizations.

(ii) Securities shall be valued in accordance with such methodology as may be adopted by the Board.

(iii) Every deposit of Governments shall be made by wire transfer to an account of the Corporation pursuant to such procedures and requirements as may be prescribed by the Corporation.

(iv) Any securities deposited as original margin may be sold at any time by the Corporation, with or without notice to the Clearing Member depositing the same, at public or private sale, without demand of any kind, all as the Corporation may in its discretion determine.

(v) Deposits of securities shall be made by such means and subject to such agreements and undertakings as may be prescribed by the Corporation.

(b) A Clearing Member may substitute a letter of credit or letters of credit for all or part of the cash it has on deposit with the Corporation as original margin, in accordance with Rule 504(c) and this Rule 505(b); provided that the amount of such letter or letters of credit may not exceed 50% of the amount of original margin such Clearing Member is required to have on deposit.

(i) Each such letter of credit must be issued by a financial institution selected by the Clearing Member in favor of the Corporation, provided that

(A) such institution is an Approved Financial Institution or the letter of credit issued by such financial institution has been confirmed by an Approved Financial Institution;

(B) the aggregate amount of letters of credit held by the Corporation, which are issued or confirmed by any one Approved Financial Institution, either in total or for the account or any one Clearing Member, may be limited by the Board from time to time.

(C) a letter of credit issued on behalf of a Clearing Member by an institution which is an Affiliated Person of such Clearing Member must be confirmed by an Approved Financial Institution which is not an Affiliated Person of such Clearing Member;

(D) each such letter of credit shall be in such form and in such denomination as may be prescribed by the Corporation from time to time,

shall be irrevocable, shall be available to be drawn upon by the Corporation by a clean sight draft or written demand and shall expire not less than 90 days from the date of deposit with the Corporation; and

(E) the reimbursement obligation of the Clearing Member to the issuing financial institution shall not be secured by a pledge of, lien on or other security interest in assets of the Clearing Member unless the written approval of the Corporation shall first have been obtained.

(ii) Any letter of credit deposited as original margin may be drawn upon, in whole or in part, at any time by the Corporation in its discretion.

(iii) Any letter of credit deposited by a Clearing Member as original margin shall cease to be eligible for credit against such Clearing Member's original margin obligations, from and after the fifth Business Day prior to its expiration date.

(c) A Clearing Member may substitute Approved Foreign Currencies (valued at an amount no to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1) for all or part of the cash it has on deposit with the Corporation as original margin, in accordance with Rule 504(c) and this Rule 505(c).

(i) The Approved Foreign Currencies must be deposited in an original margin account of the Corporation either in a United States bank in the United States that is an Approved Financial Institution, or in a branch (not separately incorporated) of a United States bank that is an Approved Financial Institution located in a country which has been approved for the purpose by the Commission.

(ii) If the Approved Foreign Currencies are being substituted for cash that is customer funds, such customer funds shall remain subject to all provisions of the Commodity Exchange Act (as amended) and Commission Regulations governing the account for and segregation of customer funds.

(iii) The Corporation may convert any Approved Foreign Currencies deposited as original margin by any Clearing Member into U.S. Dollars at any time and at such exchange rate as the Corporation in its discretion may determine.

(d) If any securities deposited by any Clearing Member pursuant to this Rule 505 are sold by the Corporation, or if any letters of credit deposited by any Clearing Member pursuant to this Rule 505 are drawn upon, or if any Approved Foreign Currencies deposited by any Clearing Member pursuant to the Rule 505 are converted into US Dollars, the net proceeds thereof shall be deposited into one or more original margin accounts maintained by the Corporation and shall be credited to the customer account or the house account of such Clearing Member, as the case may be.

¶ 11,215

Rule 506. ***Change in Status of Approved Financial Institution***

If at any time the Board suspends or terminates the status of an Approved Financial Institution as an Approved Financial Institution to issue letters of credit to the Corporation, or if the Board shall limit or change the limit on the aggregate amount of letters of credit which may be accepted from or confirmed by any Approved Financial Institution pursuant to Rule 505(b)(i)(B), or if

any Approved Financial Institution shall exceed any limits imposed pursuant to Rule 505(b)(i)(B), any Clearing Member on whose behalf letters of credit were issued or confirmed by such Approved Financial Institution shall immediately replace the same by new original margin deposits complying with these Rules to the extent and in such amounts as the Corporation may specify.

¶ 11,217

Rule 507. *Bank Holidays*

If an Exchange is open for trading on any Bank Holiday, the following procedures will apply:

(a) On the Business Day preceding such Bank Holiday, each Clearing Member shall deposit or pay such original margin, variation margin and option premium as may be required by the Corporation. Such deposit or payment shall be made without offset or reduction by reason of excess original margin held by the Corporation for the account of any Clearing Member.

(b) On the Business Day following such Bank Holiday, deposits and payments of original margin, variation margin and option premiums shall be made to and by the Corporation in accordance with these Rules, except that such deposits and payments shall be made with respect to transactions made both on such Bank Holiday and the Business Day preceding such Bank Holiday.

PART 6

Deliveries

¶ 11,219

Rule 601. *Delivery Rules*

Any delivery of commodities under any Contract shall be made in accordance with these Rules and the rules of the Listing Exchange for such Contract. Each Clearing Member which is, or which carries an account which is required to make or accept physical delivery of a commodity pursuant to a CSCE futures contract which is settled by pro forma payment and delivery shall immediately notify the Corporation if and when pro forma settlement has been made and thereafter when such futures contract has been settled by final payment and delivery in accordance with the rules of the Listing Exchange.

¶ 11,221

Rule 602. *Original Margin on Delivery Notices*

Each Clearing Member which issues or receives a delivery notice for a commodity under any Contract shall maintain original margin on each such Contract in accordance with these Rules and the rules of the Listing Exchange for such Contract. If any Clearing Member shall not have deposited or paid any original margin, variation margin or option premiums due from it at the time it tenders a delivery notice to the Corporation, the Corporation may decline to accept such delivery notice.

¶ 11,223

Rule 603. *Deliveries in Bankruptcy Situations*

(a) For the purposes of this Rule 603:

(i) Notwithstanding Rule 101, the term "Customer" shall mean any person for whom a Clearing Member carries a Contract, except a non-public customer as that term is defined in Commission Regulation 190.01(b).

(ii) The term "Debtor" shall mean any Clearing Member with respect to which an Order for Relief is entered.

(b) This Rule 603 shall apply if a Clearing Member carrying a contract traded on or subject to the rules of any Exchange for any Customer becomes a Debtor, and if the rules of any such Exchange provide for physical delivery of a commodity to be made directly between such a Customer and an opposite Clearing Member which either issued a delivery notice that was assigned to such Customer or received a delivery notice that was issued by or on behalf of such Customer.

(c) By not later than 12:00 Noon on the second Business Day following the date of the entry of the Order for Relief with respect to the Debtor, or on the date payment and delivery are required under the rules of the Listing Exchange for any Contract, whichever is sooner, each Customer of the Debtor shall notify the Corporation in writing if such Customer is seeking to make or take delivery pursuant to the applicable rules of such Exchange, giving the name and address of such Customer. Upon the giving of such notice, such Customer shall assume all the obligations of the Debtor to the Corporation and the opposite Clearing Member with respect to such

Contract (but not including the obligation to deposit with or pay to the Corporation any original margin or variation margin with respect thereto, unless required by the rules of such Exchange). If, pursuant to the preceding sentence, any such Customer is not obligated to make payments of variation margin with respect to such Contract, the opposite Clearing Member shall likewise not be obligated to make payments of variation margin with respect thereto.

(i) If the Customer is seeking to make delivery, such notice shall be accompanied by

(A) evidence, satisfactory to the Corporation, that the Debtor presented delivery notice to the Corporation on behalf of the customer;

(B) a document of title as required by the rules of such Exchange for delivery of the commodity which is the subject of the delivery notice, duly endorsed, for such commodity; and

(C) such other documents as are required pursuant to these Rules and the rules of such Exchange to make delivery in fulfillment of a Contract for such commodity.

(ii) If the Customer is seeking to take delivery, such notice shall be accompanied by

(A) the delivery notice which had been assigned by the Corporation to the Debtor and allocated by the Debtor to the Customer; and

(B) a certified, cashier's or official bank check, drawn on or issued by an Approved Financial Institution and payable to the order of the Clearing Member which presented the

delivery notice, in an amount equal to such percentage of the full amount payable on delivery of the commodity as may be prescribed in or pursuant to the rules of the Listing Exchange, subject to final adjustment based on the quantity and quality of the commodity actually delivered.

(d) A Customer who gives notice pursuant to Rule 603(c) shall be deemed to agree:

(i) To perform all obligations of the Debtor under these Rules and under the rules of the Listing Exchange with respect to each Contract described in said notice (other than the obligation to deposit with or pay to the Corporation any original margin or variation margin with respect thereto, except as may be provided under the rules of such Exchange);

(ii) To be sued in any federal or state court located in the City and State of New York in any action or proceeding on or in connection with such Contract, the provisions of these Rules or of the rules of the Listing Exchange applicable thereto or performance thereunder;

(iii) To accept service of process in any such action or proceeding by United States certified mail directed to such Customer at the address set forth in such notice or by such other means provided for by law or by the rules of the court in which such action or proceeding is brought; and

(iv) That the Corporation and the opposite Clearing Member shall be discharged from their obligations and liabilities as provided in paragraph (h) of this Rule 603.

The Corporation, as a condition to permitting the Customer to make or take delivery pursuant to this Rule 603, may require such Customer to execute and deliver to

the Corporation a written agreement, in form and substance satisfactory to the Corporation, embodying the substance of the preceding provisions of this Rule 603(d).

(e) If a Customer fully complies with paragraphs (c) and (d) of this Rule 603, the Corporation shall deliver to the opposite Clearing Member the documents and/or checks received by it pursuant to paragraph (c), upon receipt from such opposite Clearing Member of such documents and/or checks as may be necessary to effect delivery or payment, and shall transmit the same to the Customer, whereupon the Corporation shall be relieved of any and all liability to the Customer, to such opposite Clearing Member and to the Debtor with respect to such Contract.

(f) THE CORPORATION SHALL HAVE NO RESPONSIBILITY TO ANY PERSON TO INVESTIGATE OR OTHERWISE VERIFY THE ACCURACY, GENUINENESS OR COMPLETENESS OF ANY DOCUMENT OR CHECK DELIVERED TO OR BY THE CORPORATION PURSUANT TO THIS RULE 603, AND SHALL HAVE NO LIABILITY TO ANY PERSON FOR THE QUANTITY OR QUALITY OF THE COMMODITY DELIVERED.

(g) Nothing contained in this Rule shall prevent a Customer and a Clearing Member from making mutually agreeable arrangements to settle delivery on terms other than those set forth in this Rule 603.

(h) The making or taking of delivery or payment or other settlement with respect to any Contract in accordance with this Rule 603, shall discharge in full the obligations and liabilities of the Customer, the opposite Clearing Member and the Corporation with respect

thereto; provided, however, that nothing contained in this Rule 603 shall relieve or discharge a Debtor from any obligation or liability it may have to the Corporation, any Clearing Member or any Customer.

PART 7

Option Exercise

¶ 11,225

Rule 701. *Exercise Rules*

Any exercise of any option which is a Contract shall be made in accordance with these Rules and the rules of the Listing Exchange for such option.

¶ 11,227

Rule 702. *Exercise of Options*

(a) Any Clearing Member which has, or carries an account which has, an open long option position may issue an exercise notice with respect to each open long option in such form and by such time as the Corporation may prescribe.

(b) After the close on the last day of trading in any option, the Corporation will automatically exercise any open long option that has a striking price below (in the case of a call option) or above (in the case of a put option) the settlement price of the underlying futures contract on that day by an amount which equals or exceeds such automatic exercise level as may from time to time be established by the Corporation for such option, unless, by such time as may be specified by the Corporation, the Clearing Member carrying any such option gives the

Corporation written instructions that any such option is to expire unexercised.

(c) The Corporation will assign exercise notices among Clearing Members which have, or carry accounts which have, open short positions in the option series being exercised, in such manner as the Corporation shall prescribe in proportion to their gross short positions in such options, separately for customer account and proprietary account.

(d) Upon exercise of any option on a futures contract, the Corporation shall make the entries on its books to convert each such exercised option into the underlying futures contract, or to effect cash settlement of such exercised option, as may be provided herein or otherwise specified by the Listing Exchange for such option.

(i) In the case of any exercise of a call option, the option positions of both Clearing Members will be reduced by the number of options exercised: the Clearing Member exercising the option will be credited on the Corporation's books with a new long position in the underlying futures contract at a price equal to the striking price of the exercised option; and the Clearing Member assigned the exercise will be credited on the Corporation's books with a new short position in the underlying futures contract at a price equal to the striking price of the exercised option. In the case of any exercise of a put option, the option positions of both Clearing Members will be reduced by the number of options exercised; the Clearing Member exercising the option will be credited on the Corporation's books with a new short position in the underlying futures contract at a price equal to the striking price of the exercised option; and the Clearing Member assigned the exercise will be

credited on the Corporation's books with a new long position in the underlying futures contract at a price equal to the striking price of the exercised option.

(ii) On the Business Day following the day of exercise of any option in which settlement is effected in cash, the Clearing Member on behalf of which the option is exercised and the Clearing Member to which the option is assigned shall receive payment from or make payment to the Corporation in accordance with the rules of the Listing Exchange for such option.

(e) Any Clearing Member that is assigned an exercise notice pursuant to any option on a futures contract must deposit and pay any original margin and variation margin required for the underlying futures contract on the next Business Day a [illegible] before the time prescribed by the Corporation.

(f) EXCEPT AS PROVIDED IN THIS RULE 702, THE CORPORATION SHALL NOT HAVE ANY OBLIGATIONS WITH RESPECT TO ANY EXCHANGE OPTION THAT IS EXERCISED.

PART 8

Defaults

¶ 11,229

Rule 801. *Defaults*

If any of the following events ("Events of Default") shall occur with respect to any Clearing Member:

(a) If such Clearing Member fails to meet any of its obligations under its Contracts with the Corporation;

(b) If such Clearing Member fails to pay any assessments levied upon it by the Corporation when and as provided in the By-Laws;

(c) If any Monetary Default occurs with respect to such Clearing Member;

(d) If such Clearing Member fails to make any required deposit in the Guaranty Fund when and as required pursuant to the By-Laws or these Rules;

(e) If the Corporation shall determine that such Clearing Member is not in compliance with the provisions of Sections 5.2 or 5.3 of the By-Laws;

(f) If such Clearing Member commences a voluntary or a joint case in bankruptcy or files a voluntary petition or an answer seeking liquidation, reorganization, arrangement, readjustment of its debts or any other relief for the benefit of creditors under any bankruptcy or insolvency act or law of any jurisdiction, now or hereafter existing, or if such Clearing Member applies for or consents to the appointment of a custodian, liquidator, conservator, receiver or trustee (or other similar official) for all or a substantial part of its property; or if such Clearing Member makes an assignment for the benefit of creditors; or if such Clearing Member becomes or admits that it is insolvent;

(g) If an involuntary case is commenced against such Clearing Member in bankruptcy or an involuntary petition is filed seeking liquidation, reorganization, arrangement, readjustment of its debts or any relief for the benefit of creditors under any bankruptcy or insolvency act or law of any jurisdiction, now or hereafter existing; or if a custodian, liquidator, receiver or trustee (or other similar official) is appointed of the Clearing Member for all or a substantial part of its property;

(h) If a warrant of attachment, execution or similar process is issued against any substantial part of the property of the Clearing Member;

(i) If the Securities Investor Protection Corporation files an application for a protective decree with respect to such Clearing Member;

(j) If such Clearing Member holds a short futures contract position and does not tender a delivery notice on or before the time specified by the rules of the Listing Exchange on the last day on which such notices are permitted to be tendered, or fails to make delivery by the time specified in the rules of the Listing Exchange; or

(k) If such Clearing Member holds a long futures contract position and does not accept delivery or does not make full payment when due as specified in the rules of the Listing Exchange.

then, and in any such event, such Clearing Member shall automatically and without further action be suspended as a Clearing Member, except that such suspension may be temporarily postponed by the President if the President shall determine that such suspension would not be in the best interests of the Corporation, in which case the President shall immediately call a special meeting of the Board as soon as practicable, at which the Board may reinstitute such suspension or take such other action as may be provided for in the By-Laws or Rules.

¶ 11,231

Rule 802. *Liquidation on Termination or Suspension of Clearing Member*

(a) When a Person ceases to be a Clearing Member of any Exchange or is suspended as a Clearing Member of any Exchange, all open Contracts on such Exchange carried by the Corporation for such Clearing Member shall be liquidated in the manner set forth in Rule 803 as expeditiously as is practicable unless and to the extent that:

(i) Such open Contracts are transferred to and accepted by one or more other Clearing Members, with the prior consent of the Corporation;

(ii) The Chairman, any Vice Chairman or, in the absence of the Chairman and every Vice Chairman, any director and the President determine that, in their opinion, the protection of the financial integrity of the Corporation does not require such a liquidation; or

(iii) Such liquidation is delayed because of the cessation or curtailment of trading on the Listing Exchange for such Contracts.

(b) If it is determined pursuant to paragraph (a)(ii) of this Rule 802 not to liquidate any open Contracts of a Person, or if the Corporation is unable for any reason to liquidate such open Contracts in a prompt and orderly fashion, the Chairman, any Vice Chairman or, in the absence of the Chairman and every Vice Chairman, any director and the President may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such open Contracts, hedging transactions, including, without

limitation, the purchase, grant or sale of Contracts. Such officers may delegate to one or more persons the authority to determine, within such guidelines as such officers shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board not later than noon on the next Business Day, and any such hedging transactions that are executed shall be reported to the Board on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to such Person, and any gains, net of any costs and expenses, shall be credited to such Person.

¶ 11,233

Rule 803. ***Method of Closing Out***

(a) The open Contracts of any Person which, pursuant to Rule 802, are required to be liquidated pursuant to this Rule 803, shall be liquidated in such manner as the Corporation, in its discretion, may direct. Without limiting the generality of the foregoing:

(i) Any such liquidation may be effected by placing, with one or more Exchange members chosen at the discretion of the President, or, in the absence of the President, any Vice President, orders for the purchase, grant, exercise, or sale of Contracts.

(ii) Contracts on opposite sides of the market, having different expiration months, may be liquidated by spread or straddle transactions (regardless of whether they are held for different accounts or different beneficial owners), in which case the price for each Contract in any such spread or straddle shall be determined as follows: an amount equal to one-half

of the price differential at which the spread or straddle is executed shall be added to the median between the settlement prices for Contracts having the same expiration months as the two Contracts involved on the prior trading day in order to determine the price for the Contract having the higher prevailing market value at the time the spread or straddle is executed, and subtracted from such median in order to determine the price for the Contract having the lower prevailing market value at the time the spread or straddle is executed. If the President believes that setting the prices as prescribed in the preceding sentence would produce an inequitable result in any particular case, the prices may be set in such other manner as may be approved either by any two Board members or by one such Board Member and the President of the Corporation.

(iii) Options may be liquidated by closing transactions or by exercise, in the discretion of the President, and in any case where an option is exercised, the Corporation may liquidate the underlying futures contract, if any, resulting from such exercise in accordance with this Rule.

(iv) The Person whose Contracts are liquidated shall be liable to the Corporation for any commissions or other expenses incurred in liquidating such Contracts.

(v) Notwithstanding any other provisions of this Rule 803(a), any such liquidation may be effected without placing orders for execution on the floor, by making appropriate book entries on the records of the Corporation (including, without limitation, by pairing and canceling offsetting long and short positions in the same delivery months of a futures contract or in the same option series carried by a Clearing Member)

at a price equal to the settlement price or settlement premium on the day such liquidation is ordered or at such other price as the Board may establish; provided, however, if an Order for Relief has been entered with respect to such Person, the Corporation will not effect any such liquidation by book entry except as may be permitted by Commission Regulations.

(b) If, as a result of the rules of the Listing Exchange limiting fluctuations in price or other circumstances, it is not possible to liquidate all net open Contracts pursuant to Rule 803(a)(i), the Corporation may liquidate such Contracts by taking opposite positions in the current expiration month and liquidating the resultant offset positions by a spread or straddle.

(c) All liquidations made pursuant to this Rule 803 shall be for the account and risk of the Person which ceases to be a Clearing Member or which is suspended as a Clearing Member. NEITHER SUCH PERSON NOR ANY OTHER PERSON SHALL HAVE ANY CLAIM OR RIGHT AGAINST THE CORPORATION REGARDING THE TIMING OF LIQUIDATION OR THE MANNER IN WHICH OR THE PRICE AT WHICH CONTRACTS HAVE BEEN LIQUIDATED PURSUANT TO THIS RULE 803.

¶ 11,235

Rule 804. ***Amounts Payable to the Corporation***

Upon completion of the liquidation or transfer of the positions of a Person pursuant to Rule 803, the Corporation shall be entitled on demand to recover from such Person all amounts due to the Corporation for all

losses, liabilities and expenses (including without limitation legal fees and disbursements) incurred by the Corporation in connection with such liquidation or transfer.

¶ 11,237

Rule 808. *Reinstatement of Suspended Member*

Any Clearing Member suspended pursuant to Rule 801 may apply for reinstatement as provided in Rule 905.

PART 9

Disciplinary Proceedings

¶ 11,239

Rule 901. *Rule Violations*

(a) Except as provided in paragraph (b) of this Rule 901, the Corporation shall refer any suspected violation of the By-Laws or these Rules by any Clearing Member to the enforcement staff of any Exchange of which such Clearing Member is a member for appropriate action, in accordance with the rules of such Exchange.

(b) The President or his designee may summarily impose a fine against any Clearing Member:

(i) for failing to make timely payments to the Corporation of original or variation margin, option premiums, dues, fees, fines, assessments or other charges, and

(ii) for failing to make timely and accurate submissions to the Corporation of notices, reports, or other information required under any provision of the By-Laws or these Rules.

The amounts of the fines for any category of violations which may be imposed pursuant to this Rule 901(b) shall be set by the Board from time to time, provided that the maximum fine for any one violation shall not exceed $10,000. Nothing contained in this Rule 901(b) shall preclude any other action against a Clearing Member pursuant to Rule 901(a) or otherwise with respect to conduct described in this Rule 901(b). The imposition of a fine pursuant to this Rule 901(b) shall be the final action of the Corporation if a request to review such fine shall not be submitted to the Board by the Clearing Member when and as provided in Rule 902.

¶ 11,241

Rule 902. *Summary Imposition of Fines; Request for Review*

The Corporation shall give a Clearing Member written notice of a fine imposed pursuant to Rule 901(b). Such notice shall specify the date of the occurrence for which the fine is being imposed, the provision or provisions of the By-Laws or Rules giving rise to the fine and the amount of the fine. Within ten days of the giving of such notice, the Clearing Member

(a) shall pay such fine, or

(b) at its election, may submit a written request to the Board to review such fine. Any such request shall specify the basis for such review.

¶ 11,243

Rule 903. ***Review of Summary Fine by Board***

(a) The Board shall hear and consider a request for review made pursuant to Rule 902 at the next regular meeting of the Board held more than two weeks after the date on which such request for review is received by the Corporation.

(b) At the Board meeting at which the request for review is heard and considered, the Clearing Member may appear and present evidence to establish that it did not commit the violation for which the fine was imposed and/or that the fine imposed is excessive, and the staff of the Corporation may present evidence to establish that such Clearing Member did commit such violation and/or that such fine was not excessive.

(c) The Board shall not be bound by formal rules of evidence or by technical considerations. The Board shall follow such procedures as it deems best calculated to ascertain material information and otherwise to insure a fair and impartial hearing.

(d) The Board shall issue a written decision and shall provide a copy of such decision to the President and the Clearing Member. The decision may affirm, cancel, decrease or increase any fine imposed pursuant to Rule 901(b), subject to the maximum set forth therein. Such decision shall be the final act of the Corporation.

¶ 11,245

Rule 904. *Hearings in Financial Emergencies*

(a) If at any time the Board, in its sole discretion, determines that there is a substantial question as to whether a Financial Emergency exists with respect to any Clearing Member, the Board may suspend, or take any other action against, involving or with respect to such Clearing Member and/or any Affiliated Person of such Clearing Member which is also a Clearing Member as the Board may deem necessary or appropriate.

(b) Any action taken against, involving or with respect to any Clearing Member pursuant to this Rule shall be taken after notice and an opportunity to be heard, unless (i) such Clearing Member shall have waived the right to such notice and opportunity, or (ii) the Board in its sole discretion shall determine that (A) giving such notice or opportunity to be heard before taking such action is not practicable under the circumstances, and (B) there is reason to believe that immediate action is necessary to protect the best interests of the marketplace. Any such notice shall be given not later than one hour before the hearing.

(c) In any case in which action is taken against, involving or with respect to a Clearing Member without prior notice and opportunity to be heard, the Corporation shall give such member notice and an opportunity to be heard promptly thereafter. Every such notice shall (i) state the action taken, (ii) briefly state the reasons for the action and (iii) state the effective time, date and duration of the action.

(d) In any hearing pursuant to this Rule the Board shall not be bound by formal rules of evidence or by technical considerations. The Board shall follow such procedures as it deems best calculated to ascertain material information and otherwise to insure a fair and impartial hearing.

(e) At the hearing, the President shall present such evidence and considerations as may tend to show that there is a substantial question as to whether a Financial Emergency exists with respect to such Clearing Member, and the Clearing Member may present such evidence and considerations as may tend to show that no such question exists. The Clearing Member may be represented by legal counsel or any other representative of its choosing at such hearing. A substantially verbatim record of the hearing shall be made, but need not be transcribed unless the Clearing Member so requests or the Corporation so determines.

(f) The Board shall issue a written decision and shall provide a copy of such decision to the President and the Clearing Member, together with a copy of any transcript that may have been made of the hearing and copies of any documents that may have been presented at the hearing. The decision shall include a statement of the Board's determination as to whether there is a substantial question as to whether a financial emergency exists with respect to such Clearing Member and, if so, a description of any action taken, including the affirmance, modification or reversal of any action therefore taken, and the effective date and duration of the action. Such decision shall be the final action of the Corporation and shall not be subject to appeal within the Corporation.

¶ 11,247

Rule 905. *Reinstatement of Suspended Member; Revocation or Modification of Other Actions*

A Clearing Member which has been suspended pursuant to Rule 801 or 904, or which has been the subject of any other action pursuant to Rule 904, may seek reinstatement or revocation or modification of such action by submitting an application therefore in such form and accompanied by such information as the Corporation may prescribe. Such application may be rejected or granted in whole or in part by the Board in its discretion.

¶ 11,249

Rule 906. *Conflicts of Interest*

A member of the Board may not participate in any proceedings conducted pursuant to this Part 9 if such member or any Affiliated Person of such member directly or indirectly has a financial, personal or other interest in the matter under consideration.

¶ 11,251

Rule 907. *Liability for Expenses*

Any Clearing Member which, after notice and opportunity for hearing pursuant to these Rules, has been found by final action of the Corporation to have violated any By-Law or Rule, or has been the subject of action taken pursuant to Rule 904, may, in the discretion of the Corporation, be required to pay to the Corporation an amount equal to any and all expenses incurred by the Corporation (including without limitation legal and accounting fees and expenses) incurred in investigating

the matter, preparing the matter for referral to an Exchange or for submission to the Board, or otherwise in connection with such violation or action, as the case may be, in addition to any fine or other penalty which may be imposed on such Clearing Member.